

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD

COURT - 2

ITEM No.303

CP(IB)/208(AHM)2022

Order under Section 94 IBC

IN THE MATTER OF:

Narendra Kumar Bhimsen Goyal

.....Applicant

V/s

Bank of Baroda

.....Respondent

Order delivered on: 18/04/2024

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.

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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. 208 / NCLT / AHM / 2022

[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. Narendra Kumar Bhimsen Goyal

...Applicant

Versus

Bank of Baroda

...Respondent

Order pronounced on 18.04.2024

Coram:

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

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

MEMO OF PARTIES

Mr. Narendra Kumar Bhimsen Goyal,
0-601, Iscon Platinum, S.P. Ring Road,
Near Bopal Circle, Bopal, Ahmedabad-380058.

...Applicant

Versus

Bank of Baroda

"Bhadra Branch" Dinbai Tower,
Lal Darwaja, Bhadra, Ahmedabad-380001

...Respondents

Present:

For the Applicant : Mr. Tirth Nayak, Adv.

For RP : Mr. Neel Vasant, Adv.

RP in person : Mr. Manish Buchasia

For the Respondent : Ms. Nalini Lodha, Adv. for R-1

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. Devsun Solar Pvt. Ltd. (hereinafter referred to as DSPL) has obtained various working capital facilities with the Bank of Baroda since 2012 and have lastly availed cash credit limit of Rs.17,50,00,000/-. The applicant is one of the Directors of DSPL apart from being a guarantor in his personal

- and individual capacity for the credit facilities availed by DSPL. The date of default of payment is 29.05.2017. Bank of Baroda has issued demand notice to guarantor on 19.05.2017.
3. On presentation of the application by the Applicant/ Personal Guarantor, this Authority vide order dated 28.07.2022 has appointed the Resolution Professional viz., Mr. Manish Santosh Buchasia, having Registration No. IBBI/IPA-002/IP-N00487/2017-2018/11449 & directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed by him on 06.09.2022 recommending the admission of the application filed under section 94 of IBC, 2016.
 4. Respondent in his reply submitted that the loan account of DSPL was classified as non-performing asset on 31.03.2017 and the respondent bank issued demand notice u/s. 13(2) of SARFAESI Act on 21.04.2017 to DSPL and the applicant. The respondent bank proceeded further qua secured assets under the provisions of SARFAESI Act and all available secured assets have been sold on 10.02.2021 and 04.03.2023 for aggregate sum of Rs.6,97,74,300/- and made recovery of

Rs.6,50,19,961/-. It further submitted that DSPL and others challenged the SARFAESI action by filing SA No.166 of 2018 before Hon'ble DRT-I, Ahmedabad which was dismissed by final order dated 01.11.2019 against which Review application has been preferred but no stay has been granted and the same is presently pending.

5. Respondent stated that simultaneously it has also filed Original Application No.346 of 2017 before Hon'ble DRT-I, Ahmedabad on 29.05.2017 for recovery of a sum of Rs.18,69,03,042.02/- with further interest @12.50% with monthly rests + penal interest @2% simple from 29.05.2017 till realization and costs in which by order dated 14.06.2017 Hon'ble DRT-I, Ahmedabad granted ex-parte ad-interim/interim relief to the Bank. Also, the Personal Guarantors including the applicant were inter-alia directed to disclose their assets on oath which none of the guarantors have complied with.
6. Respondent submitted that the applicant has also been declared as wilful defaulter by the bank since 12.11.2018 which has not been challenged and FIR has also been filed by

the respondent against DSPL and others including applicant. It further submitted that forensic auditor in its report dated 25.09.2019 covering the period of two years before NPA date of 31.03.2017 has made several observations against DSPL and its Directors and various irregularities have also been observed and hence a complaint was filed with CBI against DSPL and its Directors including the applicant which was registered as FIR no. RC0592022A004 on 23.02.2022 at STB Police Station, Delhi which is still under investigation and chargesheet is yet to be filed. Respondent stated that it has also issued a Look-out Circular against the applicant which has been challenged by the applicant by way of writ petition being SCA No.16229 of 2023 which is still pending.

7. We have heard the learned Counsel for both the parties and perused the documents on record. We have also gone through the report dated 06.09.2022 filed by the RP.
8. Bank of Baroda has issued Demand Notice to the guarantor on 19.05.2017. The date of default is shown as 29.05.2017. Thereafter, they have not initiated any proceedings against the guarantor under IBC. When the Demand Notice was issued in

the 19.05.2017, the application is filed on 15.07.2022 is barred by limitation. The applicant failed to establish how the application is within the period of limitation.

9. According to the applicant, they are covered by the judgment of Hon'ble Supreme Court in Suo Motu Writ Petition i.e., MA 29 of 2022 in MA 665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020. Hon'ble Supreme Court has given directions regarding excluding limitation period, which are as under:-

(I) The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2020 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

(II) Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

(III) In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022,

notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days, that longer period shall apply.

(IV)

10. In short, in para-I, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation in respect of proceedings and balance period, if any, available from 03.10.2021 will be available from 01.03.2022. It is also directed that in cases where the limitation would have expired in between 15.03.2020 & 28.02.2022, irrespective of actual balance period the persons shall have limitation period of 90 days from 01.03.2022 and so on. Thus, it is clear that when the limitation period expired during 15.03.2020 till 28.02.2022, the directions in Para-III will be applicable.
11. The case in hand, the date of default mentioned is 29.05.2017 and the date of demand notice is 19.05.2017. Then a limitation period is expired during the period between 15.03.2020 to 28.02.2022. Hence, the directions given in para-III of the order clearly gives 90 days further period from

01.03.2022. It is also mentioned that in the event of actual balance period of limitation remains is greater than 90 days from 01.03.2022 in that case longer period shall apply. So if the date of invocation of guarantee i.e., demand notice is taken into consideration as 19.05.2017 the applicant will have only 90 days limitation period to file an application.

12. Considering the date of default as well as date of demand notice by the respondent, 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) 208 of 2022 is rejected.

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

CHITRA HANKARE
MEMBER (JUDICIAL)