

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.307 & 308
CP(IB)/240(AHM)2022

Order under Section 95 IBC

IN THE MATTER OF:

Yes Bank Limited

.....Applicant

V/s

Mehul Gor

.....Respondent

(Personal Guarantors)

Order delivered on: 04/04/2024

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. 240 / NCLT / AHM / 2022

With

IA/7(AHM)2024

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

J.C Flower Asset Reconstruction Private Limited
12th Floor, Crompton Greaves House,
Dr. Annie Besant Road, Worli,
Mumbai-400030

... Financial Creditor

Versus

Mr. Mehul Gor
Block No.5, Shree Building
R.C. Marg, Chembur
Mumbai-400071

... Personal Guarantor

Order pronounced on 04.04.2024

Coram:

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

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

Present:

For the Applicant : Ms. Uditia Miyan, Adv.
For the RP : Ms. Aditi Sharma, Adv.
RP : Mr. Prakul Tadi.
For the Personal Guarantor : Mr. Tith Nayak Adv.

JUDGEMENT

1. Yes Bank Limited substituted by J.C Flower Asset Reconstruction Private 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. Mehul Gor, the Personal Guarantor of the Corporate Debtor namely Ashapura Garments Limited for default of an amount of Rs.7,90,04,162.79/-.
2. The said amount is due to the corporate debtor and the date of default is 10.10.2017. The Corporate Debtor was brought under CIRP under Section 7 of IBC vide order dated 27.09.2021 and presently under liquidation. The applicant has granted credit facilities of Rs.10,00,00,000/- to the Corporate Debtor to which the respondent stood as a personal guarantor. At the request of the Corporate Debtor Facility Letter was issued by the financial creditor on the above facilities. Deed of Guarantee was executed between Financial Creditor and Personal Guarantor on 09.03.2010. Deed of Hypothecation was executed by the corporate debtor in favour of the applicant on 09.03.2010. Addendum to the credit facility was executed on various occasions.
3. The account of the corporate debtor was classified as NPA on 12.10.2015. In view of default in payment, the applicant invoked personal guarantee vide notice dated 10.10.2017 calling upon the

personal guarantor to pay total outstanding dues amounting to Rs.5,51,22,364.81 together with interest etc. The respondent personal guarantor failed to discharge the obligations. Thereafter, in September 2021, corporate debtor was admitted into CIRP. Thereafter, applicant issued Demand Notice on 03.01.2022 to the respondent as the respondent failed to repay the amount within 14 days. The applicant, YES Bank, initiated this proceeding. The applicant relied upon directions of Hon'ble Supreme Court in Suo Moto Writ Petition No. 3 of 2020 to exempt the period to bring the application within limitation.

4. This Tribunal has appointed Mr. Rakul Thadi, bearing IBBI Registration No. IBBI/IPA-002/IP-N01149/ as Resolution Professional. Accordingly, he has filed a report through Interlocutory Application on 19.12.2023.
5. On perusal of the report of the RP, it is observed that RP has not received any evidence of repayment of debt by the personal guarantor also he has not received any documents or order from any forum for the cancellation of personal guarantee agreement. The RP submitted that the application satisfies the requirement of provisions of section 95 of the IBC and recommended for admission of the application.
6. The copy of report is served upon the respondent. The respondent objected the application by filing his reply. He has stated that the petition is barred by limitation as the date of default is mentioned as 10.10.2017 and the application filed before this Tribunal on 17.08.2022. The instant application is barred by limitation under

Article 137 of the Limitation Act and thus not maintainable. Further submitted that no demand notice was issued in the year of 2017 to the respondent, the demand notice dated 03.01.2022 was never served upon the respondent as the parcel was returned undelivered on 07.01.2022.

7. Heard Ld. Counsel for the applicant, Ld. Counsel for the RP and Ld. Counsel for the Respondent.
8. The applicant itself stated that it has invoked guarantee by issuing notice dated 10.10.2017. However, no action is initiated by the applicant since then till 23.08.2022. The applicant submitted that they have given another notice to the personal guarantor. They have calculated limitation period from 03.01.2022 from the date of 2nd notice. When the personal guarantee was invoked by notice dated 10.10.2017, the limitation period will start from that date and not from the date when the 2nd notice was issued for no reason. The limitation period will expire on 10.10.2020. In paragraph-iii of the order passed in Suo Moto Writ Petition (C) No.3 of 2020, the Hon'ble Supreme Court, directs that if the period of limitation expires between 15.03.2020 till 28.02.2022, then the limitation period will be extended by 90 days from 01.03.2022.
9. The applicant has relied upon the order of Hon'ble Supreme Court passed in Suo Moto Writ Petition No. 3 of 2020. The 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 from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*
- (IV) *It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instrument Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*

10. The main grievance in the present case is limitation. The Hon'ble Supreme court in Suo Moto Writ Petition No. (Civil) 03 of 2020 excluded the period from 15.03.2020 to 28.02.2022 for calculating the period of limitation. The relevant para is reproduced herein:

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 from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply"

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 respondent. According to him, respondent had not brought on record any documents denying or disputing the invocation of his personal guarantee. He has not even denied issuance of personal guarantee to the Corporate Debtor in his reply except the limitation and demand notice, no other defences raised by the personal guarantor. The liability of personal guarantor is co-extensive with the principal borrower as per Section 128 of the Contract Act. Recall notice was issued by the Yes Bank on 10.10.2017 demanding outstanding dues. The petitioner has also issued demand notice in respect of unpaid debt from the corporate debtor to the respondent on 03.01.2022 which was returned undelivered.
12. The Recall Notice and the date of submission of this application are clearly time barred by Sec 137 of the limitation Act which has to be applied in deciding the case. The second notice was issued after the period of expiry of limitation and it is not delivered. The substitution of the debt, even if there was a clause for sell off the asset by the financial creditor in the documents executed, the guarantee has to be invoked within the period of 3 years from the first notice of default and application submitted for initiation of CIRP in terms of Sec 238A of IBC 2016 within the time period specified of 3 years which has expired on 30 May 2022 even considering the Supreme Court ruling in this regard.
13. As per directions of Hon'ble Supreme Court in suo moto WP, if the limitation period expired during the period between 15.03.2020 till 28.02.2022, then only limitation of 90 days is available. In this

case, personal guarantee was invoked on 10.10.2017, thereby the limitation period expires on 09.10.2020, i.e. between the above period. So the application must have been filed within 90 days from 01.03.2022. This application is filed on 23.08.2022, which is certainly beyond limitation.

14. In view of the aforementioned facts and submissions, the following order is passed:

ORDER

CP(IB) No. 240 of 2024 along with IA 7 of 2024 is rejected.

-Sd-

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

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)