

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

ITEM No.302
C.P. (IB)/258(AHM)2023

Order under Section 95 IBC

IN THE MATTER OF:

Indian Bank
V/s
Kartik Babulal Jain

.....Applicant

.....Respondent

Order delivered on 02/05/2024

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 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/258/AHM/2023

[Application under Section 95(1) of the Insolvency & Bankruptcy Code, 2016 r.w. Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019]

*In the matter of **Sh. Kartik Babulal Jain***

Indian Bank,

Registered Office at:
SAM Large Branch,
17, First Floor, Parliament Street,
New Delhi – 110 001.

... Petitioner/ Financial Creditor

VERSUS

Sh. Kartik Babulal Jain

S/o. Shri Babulal G. Jain,
Personal Guarantor of the Corporate Debtor:
M/s. Surat Paper Yarn Park Ltd,
101, Thakkar Place,
Goddod Road,
Surat, Gujarat – 395007,
India.

... Respondent/ Personal Guarantor

Order pronounced on 02.05.2024

CORAM:

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

APPEARANCE:

For the Applicant : Mr. Amod Dalela, Advocate.

O R D E R
Per: Bench

1. The present application is filed on 23.10.2023 under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by Applicant Bank (herein after referred to as "Financial Creditor") for the purpose of initiating of insolvency process against **Sh. Kartik Babulal Jain** (herein after referred to as "Personal Guarantor") for a default amount of **Rs.4,32,68,299/-** including interest, penal interest & other charges. The date of default is stated to be **30.09.2014**.

2. The case of the Applicant Bank/ Financial Creditor is that the borrower, M/s. Surat Super Yarn Park Ltd. applied for sanction of working capital facilities to the IL&FS Consortium of Financial Institutions and Banks under PMDO, and Indian Bank was

member bank which was formerly Allahabad Bank before amalgamation.

3. Initially, IL& FS on behalf of the Consortium of Financial Institutions & Banks under PMDO, Indian Bank (former Allahabad Bank) being member granted certain Credit Facilities vide Sanction Letter dated 24.09.2008 to principle borrower/Corporate Debtor (M/s. Surat Super Yarn Park Ltd.) which was revised vide Sanction Letter dated 22.09.2014 **(Annexure-I)** by way of re-scheduling with revised terms and sanctions for which various loan security documents were executed by the principle borrower/Corporate Debtor on 29.09.2014 in favour of the erstwhile Allahabad Bank. The Respondent/Guarantor also executed Guarantee Agreement in favour of the erstwhile Allahabad Bank vide Letter of Guarantee dated 29.09.2014 **(Annexure-VII)**
4. However, the principle borrower/ Corporate Debtor failed to adhere the financial discipline of the

applicant/ financial creditor (erstwhile Allahabad Bank) and committed default. Accordingly, the loan account of the Corporate Debtor was classified as NPA on 30.09.2014.

5. The erstwhile Allahabad Bank was amalgamated into the present applicant – Indian Bank on 05.03.2020. The Applicant Bank has annexed copy of the Gazette Notification dated 04.03.2020 notifying the “Amalgamation of Allahabad Bank into Indian Bank Scheme 2020” under Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.
6. Thereafter, the Applicant Bank, vide a Demand Notice dated 18.08.2022 invoked the Bank Guarantee demanding the total outstanding debt including the interest, Rs.4,32,68,299/- from the Respondent/Personal Guarantor.
7. Thereafter, a show-cause notice dated 03.08.2023 (**Annexure-X**) to declare the loan account as fraud

was also issued to the Corporate Debtor as well as the present respondent/ guarantor on with retrospective effect of date of NPA 30.09.2014.

8. In order to satisfy the period of limitation, as to how the present application filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 against the Respondent/ Guarantor is within limitation; the Applicant Bank further filed written submissions on 18.04.2024 vide diary no.D-3193 and relied upon various judgments of the Hon'ble NCLAT as under:-

- (i) *Pooja Ramesh Singh V/s. State Bank of India, Company Appeal (AT) (Insolvency) No.329 of 2023.*
- (ii) *J.C. Flowers Asset Reconstruction Pvt. Ltd. V/s. Deserve Exim Private Limited (03 May 2023)*
- (iii) *Ashok Tiwari V/s. Tatva & Mittal Life Spaces Private Limited in Company Appeal (AT) (Ins.) No. 729 of 2023.*

9. Further, the applicant bank has also relied upon the decision of the Hon'ble Supreme Court as under:

- (i) *Laxmi Pat Surana V/s. Union of India & Anr. (Civil Appeal No.2734 of 2020)*
- (ii) *Dilip B. Jiwarjka V/s. Union of India & Ors. in Writ Petition (Civil) No. 1281 of 2021.*

10. We have heard the learned counsel for the Applicant Bank and perused the documents on record.
11. No doubt, the liability of the Personal Guarantor starts from the date of invocation of Bank Guarantee. The judgment relied upon by the Applicant bank as referred above are of the said-ratio. However, it is not the case of the Applicant Bank/ Financial Creditor that Bank Guarantee was invoked within 3 years from the date of classifying the account as NPA. As no material is placed on record to show that after execution of the Letter of Guarantee dated 29.09.2014 any acknowledgement was taken from either from the principle borrower or from the personal guarantor within three years of from date of NPA/default committed by the Principal Borrower/Corporate Debtor.
12. In the present case, the Applicant Bank/Financial Creditor has invoked the Bank Guarantee against personal guarantor vide Demand Notice dated

18.08.2022 (**Annexure-VIII**) which is after almost 8 years from the date of default/NPA.

13. Hence, the present application filed by the Applicant Bank/Financial Creditor against the Respondent/ Personal Guarantor is not maintainable as Bank Guarantee was not invoked with three years of limitation period from the date of classifying the account as NPA/default.
14. In terms of the above, **CP(IB)/258/(AHM)/2023** filed under Section 95 of the IBC, 2016 is dismissed as hit by the period of limitation. No order as to cost.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

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