

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
IA/1478(AHM)2023 in C.P. (IB)/176(AHM)2023

Order under Section 99 IBC

IN THE MATTER OF:

Ramchandra Dallaram Choudhary
RP of Dinesh Jamnadas Khanpara

.....Applicant

Order delivered on: 03/05/2024

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 order.

The order is pronounced in 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. 176 / NCLT / AHM / 2023

[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:

Shri Dinesh Jamnadas Khanpara

...Applicant

Order pronounced on 03.05.2024

Coram:

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

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

MEMO OF PARTIES

Applicant:

Shri Dinesh Jamnadas Khanpara
Residing at:
402, Shantiniketan Apartments
B/h. Prasang Hall
150 Feet Ring Road
Rajkot, Gujarat-360001

Financial Creditor:

RBL Bank Ltd.
Having its office at:
Ground Floor,
Viva Complex
Opp. Parimal Garden
Near JMC House
Ellisbridge
Ahmedabad-380006

Present:

For the Applicant : Mr. Atul Sharma, Adv. &
Mr. Arjun Padhiyar, Adv
RP in person : Ramchandra D Choudhary
For the RBL Bank : Mr. Rasesh Sanjanwala, Sr. Adv. a.w Mr.
Anip Gandhi, Adv. & Mr Raju Kothari, Adv.
For Personal Guarantor : Mr. Manish Bhatt, Sr. Adv. a.w Ms. M A
Gogia, Adv

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. Khedut Agro Engineering Private (hereinafter referred as Corporate Debtor) has obtained cash credit facility and term loan from RBL Bank Limited. The applicant is one of the Directors of Corporate Debtor apart from being a guarantor in his personal and individual capacity for the credit facilities availed by Corporate Debtor. The date of default of payment is 28.03.2022. RBL Bank Limited has issued demand notice u/s. 13(2) of SARFAESI Act against the Corporate Debtor as well as Applicant on 22.09.2022.
3. On presentation of the application by the Applicant/ Personal Guarantor, this Authority vide order dated 11.12.2023 has appointed the Resolution Professional viz., Shri Ramchandra Dallaram Choudhary having Registration No. IBBI/IPA-001/IPP00157/2017- 2018/10326 & directed RP to file report

under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed by him on 21.12.2023 recommending the admission of the application filed under section 94 of IBC, 2016.

4. The Respondent-RBL Bank Limited filed its reply stating that application is incomplete as the applicant did not disclose many information and documents including the guarantee agreement pertaining to it. Respondent further submitted that it had sanctioned Cash Credit Facility-I of Rs.7 crores and Term Loan of Rs.39.70 Lakhs aggregating to Rs.7,39,70,000/-, vide sanction letter dated 09.06.2015, to Khedut Agro Engineering Private Limited/Principal Borrower which were enhanced from time to time, lastly on 21.12.2021 an aggregate amount of Rs.10.84 crores. The borrower and guarantors had executed various loan and security documents also hypothecated movable properties and mortgaged immovable properties. It is further submitted that the account of the principal borrower was classified as Non-Performing Asset (NPA) on 28.03.2022 and was declared as fraud on 24.01.2023. Hence, the principal borrower filed Special Civil Application No. 15983 of 2023 before the Hon'ble Gujarat High Court, with an intent to defraud its

creditors which is pending for adjudication. Guarantors also issued demand notice and published it in newspapers and affixed the notice at address of Mr.Ranchodbhai. He and Mr. Dinesh Khanpara raised objection. Thereafter, it issued notice dated 16.02.2023 to take possession of the secured properties and fixed date of taking possession of the properties on 16.02.2023. The authorized officer could not take possession of the properties as Mr. Dinesh Khanpara refused to hand over peaceful and vacant possession of the mortgaged properties. It had filed an application under Section 14 of the SARFAESI Act before the Ld. Chief Judicial Magistrate at Rajkot. Ld. CJM allowed and said application vide order dated 13.04.2023. Pursuance to the order dated 13.04.2023, the Ld. Court Commissioner issued notice for taking physical possession of the factory property and fixed the date for taking physical possession on 11.06.2023. Mr. Dinesh Khanpara filed Securitization Application before Debts Recovery Tribunal-II, Ahmedabad (DRT) seeking stay of the possession of the mortgaged properties. However, no stay was granted. Since they did not get the stay order from Ld. DRT, they filed two separate

petitions under Section 94 of the IB Code. It is further submitted that there are three guarantors, viz. Mr. Dinesh Jamnadas Khanpara, Mr. Ranchhodbhai Laxmidas Khanpara and M/s. Khedut Agro Engineering (a partnership firm).

5. It is further submitted that the borrower and the guarantors approached the respondent bank for settlement and submitted One Time Settlement (OTS) proposal on 07.03.2023 for Rs.5.00 crores and again submitted a fresh OTS proposal on 18.05.2023 for Rs.5.33 crores but the same was rejected by it. It is further submitted that the applicant has not annexed his income tax return for Assessment Year 2022-2023 and has only annexed his verification form of ITR. It is further submitted that the declaration filed by the Insolvency Professional, is not supported by any documentary evidence. It is submitted that the present application is only filed with an ulterior motive to default the creditor and for enjoying the interim protection.
6. Applicant filed rejoinder to the reply filed by the respondent. It is further submitted that the respondent admitted that the applicants along with others are unable to discharge their debts, thus, it cannot be said that the present application is

filed for frustrating the legal proceedings initiated by the respondent. It is further submitted that it has made statement before DRT along with others for settling the account as family friends and well-wishers have assured financial assistance but they have backed out from the said assurance and it has no any other option but to file the Insolvency Application. Thus, the possession of the factory property was taken away without giving an opportunity to him which is violation of principle of natural justice. It is submitted that he has filed SCA vide No. 19865 of 2023 on 03.11.2023 for quashing and setting aside Notice dated 2305.2023 issued by the Court Commissioner of Chief Judicial Magistrate. It is submitted that the original applicant(s) firm and others have given guarantee to the financial creditor for the loan availed by the corporate debtor. He has neither sufficient assets nor has funds to discharge above obligations as a Guarantor to the corporate debtor. He further submitted that he has not ulterior motive to defraud the creditor and not for enjoying the interim protection. It is submitted that the proceedings initiated by the Financial Creditor – RBL Bank Ltd. under the SARFAESI Act, itself reflects

that the default has occurred and the corporate debtor and guarantor are not able to pay their debt.

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 21.12.2023 filed by the RP.
8. After passing the order by Learned Chief Judicial Magistrate, Rajkot on 13.04.2023 as well as after the notice dated 23.05.2023 issued by Court Commissioner to take physical possession of the Factory Property fixing on 11.06.2023, this application was e-filed on 10.06.2023, presented for inward on 12.06.2023 and cleared from scrutiny only on 16.06.2023.
9. It is clearly established that the present application was filed by the debtor to thwart the recovery proceedings initiated by the sole Secured Financial Creditor and to frustrate other proceedings under SARFAESI Act. It appears to us that the sole intention of the debtor herein is to enjoy the moratorium as contemplated under Section 96 of the IBC, 2016 which commences from the date the application.

10. It will be a travesty of justice if we allow the application i.e. CP(IB) No. 176 of 2023 and the consequential report of the IRP filed in IA 1478 of 2023.

11. Hence we pass the following order:

ORDER

CP(IB) No. 176 of 2023 is rejected.

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

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**CHITRA HANKARE
MEMBER (JUDICIAL)**

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