

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU**
[Through Physical hearing/VC Mode (Hybrid)]

ITEM No.35
C.P.(IB)No. 21/BB/2024

IN THE MATTER OF:

Mr. Somashekar M.G

... Petitioner

Order under Section 94 (1) of Insolvency & Bankruptcy Code, 2016

Order delivered on: 24.04.2024

CORAM:

SH. K. BISWAL
HON'BLE MEMBER (JUDICIAL)

SH. MANOJ KUMAR DUBEY
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner : Mr. Gajendra Ravi, Proxy Counsel

ORDER

1. Heard the Ld. Proxy Counsel appearing for the Petitioner.
2. This Petition has been filed on 28.12.2023 under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 by the Applicant/Personal Guarantor, Mr. Somashekar M.G., to initiate insolvency resolution process in terms of Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority for Insolvency Resolution Process for Personal Guarantors) Rules, 2019. On perusal of the Petition, it is observed that, the Deed of Guarantee, Letter/Notice for Invocation of Guarantee and the copies of relevant ownership and title documents for all assets are not annexed to the present Petition.
3. The Applicant has filed two Demand Notice dated 12.12.2022 and 07.10.2023 issued by Canara Bank and Federal Bank Limited respectively, U/s.13(2) of SARFAESI Act, 2002 addressed to the Principal Borrower as annexed at Annexure-1 (i) and (ii) with the Petition. However, the Applicant has not annexed Possession Notice which is issued U/s.13(4) of the SARFAESI Act, 2002 read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002.
4. On perusal of the records available, it is noted that there is nothing on record to show that any other notice has been issued by the Financial Creditors to

:2:

the Applicant in the capacity of Personal Guarantor to invoke the Personal Guarantee. Additionally, the Demand Notice U/s. 13(2) of the SARFAESI Act, 2002 issued on 12.12.2022 and 07.10.2023 which were sent for enforcing the secured assets cannot be construed as notice invoking guarantee, in light of the decision of Hon'ble NCLAT in the matter of *Amanjyot Singh V. Navneet Kumar Jain & Ors. (Company Appeal (AT) (Insolvency) No. 961 of 2022)*. Moreover, no document is annexed by the Applicant that clarifies the terms and conditions for invocation of guarantee and the ownership and title of the secured assets.

5. Further, in the present case there is no 'Deed of Guarantee' attached with the Petition, which is the basic document for proceeding U/s 94 of the Insolvency & Bankruptcy Code, 2016. Therefore, the Applicant has not proved that it falls within the definition of 'Guarantor' according to Rule 3(f) of the Insolvency and Bankruptcy (Application to Adjudication Authority for Insolvency Resolution Process for Personal Guarantors) Rules, 2019. The Petition is therefore defective.
6. On perusing the material placed on record in the present case, we are of the view that the present Petition is defective and premature. Hence, **C.P(IB).21/BB/2024 stands dismissed** with liberty to file the same along with the requisite documents as per the provisions of the Code.

-Sd-
MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

-Sd-
K. BISWAL
MEMBER (JUDICIAL)