

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV

IB-773/(ND)/2020

Section: Under Section 94 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 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:

Amrit Kumar Patel
RZ-B2/115, 1st Floor,
Vijay Enclave, Palam
New Delhi-110045

...Applicant

versus

1. Phoenix ARC Private Limited
(Through Resolution Professional)
158, 7th Floor, Dani Corporate Park,
CST Road, Mmrda Area Kalina,
Santacruz East, Mumbai
Maharashtra-400098

2. Indian Overseas Bank
763, Anna Salai
Chennai-600002

3. Patel Wood Products Limited
RZ-B2/115, 1st Floor,
Vijay Enclave, Palam
New Delhi-110045

...Respondents

Date: 13.05.2022

Coram:

Mr. DHARMINDER SINGH, MEMBER (J)

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Ms. SUMITA PURKAYASTHA, MEMBER (T)

ORDER

Per SH. DHARMINDER SINGH, MEMBER (JUDICIAL)

1. The instant application has been filed by 'Mr. Amrit Kumar Patel' under Section 94 read with section 122 of the Insolvency and Bankruptcy Code, 2016 under rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019 (for brevity "Rules") for initiation of Insolvency Resolution Process against the Applicant.

2. The case of the applicant is that:

a. In the Year 2007 the Patel Wood Products Limited (hereinafter be called as "Corporate Debtor"), approached ICICI Bank Limited, (original lender bank) for sanction of various loan and credit facility. Subsequently, various credit facilities were sanctioned in favor of the corporate debtor and hypothecation on the current assets of the corporate debtor and exclusive charge was created on the assets of the various properties of the applicant. Various personal guarantee agreements were also executed.

b. However, since the corporate debtor failed to maintain

financial discipline, the account was classified as NPA on 30.04.2013 and notice u/s 13(2) of SARFAESI Act, 2002 was sent to corporate debtor and the personal guarantors of corporate debtor. OA No. 235/2014 under Section 19 of RDD&FI before Hon'ble DRT-I, Delhi against the Corporate Debtor and the personal guarantors including applicant.

- c. Thereafter, the loan account of Corporate Debtor was assigned to Respondent No.1, i.e. Phoenix ARC Private Limited. The DRT-I on 31.05.2019 decided the OA 235/2014 against the corporate debtor and personal guarantors for recovery of Rs. 35,83,00,000/-, with pendenlite and future interest.
 - d. The applicant in its application has filed details of his assets and debts/liabilities and submitted that since he is unable to pay its debt, the Insolvency Resolution Process should be issued against him.
 - e. In order to prove his default the applicant has placed on record notice issued u/s 13(2) of the SARFAESI Act and order dated 31.05.2019 passed by DRT-I and various other loans and debt documents.
3. The respondent no. 1 and 2 have filed their respective

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replies raising objections against the present application. The main objection raised by both the respondents is that the applicant is misusing the law as recovery certificate has already been issued by DRT-I in favor of the respondent no.1 and proceedings are also pending for recovery by respondent no.2 us 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and issuance of interim moratorium u/s 96 of the Code would defeat the purpose of all the recovery proceedings. It is also pointed out that notice to arrest has already been issued against the applicant on 14.09.2020 and the present application is an attempt of applicant to save himself from the arrest.

4. The Respondent No.2 further submitted that since an application u/s7 of the Code filed by respondent no.2 against the corporate debtor was rejected by this Tribunal and the same order was further upheld by Hon'ble NCLAT, on the ground of limitation, the present application is also not maintainable.

5. The applicant has filed his rejoinder submitting that issuance of recovery certificate on 31.05.2019 by DRT-I creates fresh cause of action and the objection regarding time barred debt is not sustainable. The applicant further submitted that taking recourse of remedy available to the Applicant under law

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does not any way establishes malafide intention. The applicant submits that since the guarantee has been invoked and debt is still unpaid the application filed u/s 94 is maintainable.

6. We have heard the Ld. Counsel for the parties and perused the case records. Hon'ble NCLAT in the matter of ***Hytone Merchants Private Limited Versus Satabadi Investment Consultants Private Limited, Company Appeal (AT) (Insolvency) No. 258 of 2021***, has observed as follows:

“45. Based on the above discussion, we believe that even if the petition complies with all requirements of Section 7 of the Insolvency and Bankruptcy Code, 2016, it is filed collusively, not with the intention of Resolution of Insolvency but otherwise. Therefore, it is not mandatory to admit the Application to save the Corporate Debtor from being dragged into Corporate Insolvency Resolution Process with mala fide.”

7. Similarly, in the present matter the respondents has already demonstrated that the recovery proceedings are already under process against the corporate debtor, applicant and other guarantors, even notice to arrest has already been issued against the applicant. In these circumstances, the applicant has filed present application with the ulterior motive to stall the

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recovery proceedings, which will result in loss of public money involved.

8. In view of the facts of the present case it is apparent that the present application is filed only to misuse the protection of interim moratorium u/s 96 of the Code.

9. Resultantly, we are not inclined to admit the application filed by the applicant, therefore, the application is rejected.

Let copy of the order be served to the parties.

Consign the case records to the record room.

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(SUMITA PURKAYASTHA)
MEMBER (TECHNICAL)

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(DHARMINDER SINGH)
MEMBER (JUDICIAL)