

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD

COURT - 2

ITEM No.303

C.P.(IB)/237(AHM)2022

Order under Section 95 IBC

IN THE MATTER OF:

State Bank of India

.....Applicant

V/s

Kuldipsingh Anopsingh Chudasma

.....Respondent

Order delivered on: 07/03/2024

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. 237/NCLT/AHM/2022

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

In the matter of :-

State Bank of India
Stressed Assets Management
Branch,
2nd Floor, Paramsiddhi Complex,
Opp. V. S. Hospital, Ellisbridge,
Ahmedabad-380006, Gujarat

... Applicant /
Financial Creditor

Versus

Mr. Kuldipsingh Anopsingh
Chudasma
New Plot area, Village Vekri,
Taluka Gondal-360311

... Respondent/
Personal Guarantor

Order pronounced on 07.03.2024

Coram:

Mrs. Chitra Hankare, Member (Judicial)

Dr. V. G. Venkata Chalapathy, Member (Technical)

Present:

For the Applicant : Mr. Biju Nair, Advocate

For the Respondent : Arjun Sheth, Adv

JUDGMENT

1. State Bank of India (Financial Creditor) has filed this Application under section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 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, seeking to initiate Insolvency Resolution Process against Mr. Kuldipsingh Anopsingh Chudasma, the Personal Guarantor of the Corporate Debtor namely M/s. Yogiraj Ginning and Oil Industries Pvt Ltd. for default of an amount of Rs.24,41,53,898.12/-.
2. As per letter of arrangement dated 07.01.2012, credit facilities were sanctioned to the Corporate Debtor. It was renewed from time to time i.e. on 15.04.2013, 09.05.2014 and 24.03.2015. The credit facilities were enhanced on 21.04.2016 and renewed on 26.04.2017 and 06.06.2018. The Respondent executed personal guarantee in favour of the applicant for securing various credit facilities to Corporate Debtor on 07.01.2012, 05.06.2014 and 24.03.2015. According to the applicant, as per the last guarantee agreement executed by the respondent dated 24.03.2015, credit

facilities aggregating to Rs.19.65 crores were secured. It includes interest, charges, expenses, commissions, etc. The respondent also executed revival letter on 19.09.2017, so limitation started from that date. The Corporate Debtor defaulted in the repayment, hence, its credit facility account becomes Non-Performing Asset (NPA) on 27.09.2018. The applicant, therefore, issued notice on 14.06.2019 under Section 13(2) of the SARFAESI Act to the corporate debtor and personal guarantor. They have not filed reply to said notice. Thereafter, they filed application before DRT for recovery of an amount of Rs.19,00,36,798.08. The applicant also filed application under Section 7 of the IBC against the corporate debtor which was admitted. The application for liquidation of Corporate Debtor is pending before this Tribunal. According to the applicant, the debt was due on 25.10.2019 and default was occurred on 24.12.2019. The total amount of default is mentioned as Rs.24,41,53,898.12 together with interest.

3. This Hon'ble Adjudicating Authority vide order dated 30.08.2022 directed to issue notice upon the personal guarantor. Pursuant to that notice counsel for the personal guarantor appeared and filed

vakalatnama but no reply filed till date.

4. The applicant submitted that Demand Notice dated 14.06.2019 under SARFAESI Act was issued to personal guarantor but there is no evidence placed on record to show that the notice was duly served and received by the personal guarantor. Copy of acknowledgment is also not annexed with the present petition. The applicant submitted that the corporate debtor and the personal guarantor executed Revival Letter dated 19.09.2017 in favour of the applicant. On perusal of the documents annexed with application, it appears that the revival letter is not produced by the applicant.
5. The revival letter as well as acknowledgement of service of notice was not filed at all. No reason given for not filing the same. Hence, the application is not within the period of limitation without revival letter. It is filed subsequently by way of pursis on 27.02.2024. However, it will be in the interest of justice to decide the matter on other aspects so as to avoid remand of matter.
6. The next point to be considered is of limitation. According to applicant, demand notice under Section 13(2) of the SARFAESI Act is to be treated as invocation of guarantee as it was issued to

guarantors also. According to applicant, the date of default as recorded with NeSL was 30.06.2018 and date of NPA was 27.09.2018. The obligation of guarantor is co-extensive and co-terminus with that of the principal borrower as per Section 128 of the Indian Contract Act.

7. On perusing IU certificate dated 23.06.2021 produced by the applicant, the date of default is mentioned as 30.06.2018 wherein the applicant has given default information mentioning the date of default as 30.06.2018 while in the application they have mentioned date of default as 24.12.2019. There is no explanation how the date of default has been changed from 30.06.2018 to 24.12.2019. It is also pertinent to note that the applicant has issued notice under SARFAESI Act on 14.06.2019 and are relying upon same. No further notice is issued by the applicant, when they have mentioned date of default as 24.12.2019 (as per Form B) there was no reason for the applicant to issue notice prior to default i.e. on 14.06.2019. It means that the applicant has issued notice dated 14.06.2019 without there being default in repayment. Therefore, to consider default dated 24.12.2019, notice dated 14.06.2019 cannot said to be

invocation of guarantee by the applicant. If we consider date of default as 24.12.2019, no further notice of invoking guarantee was issued thereafter to the guarantor. Considering these important dates, it appears that the guarantee is not invoked when the default occurred so the petition is liable to be dismissed.

8. If we consider another contingency that the date of default mentioned in NeSL as 30.06.2018, the period of limitation would have expired in June 2021. According to the applicant, they are covered by the judgment of Hon'ble Supreme Court in Suo Motu Writ Petition i.e., MA 29 of 2022 in MA 665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020. 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, that longer period shall apply.

(IV)

9. In short, in Para-I, it is directed that the period the from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation in respect of proceedings and balance period, if any, available from 03.10.2021 will be available from 01.03.2022. It is also directed that in cases where the limitation would have expired in between 15.03.2020 & 28.02.2022, irrespective of actual balance period the persons shall have limitation period of 90 days from 01.03.2022 and so on. Thus, it is clear that when the limitation period expired during 15.03.2020 till 28.02.2022, the directions in Para-III will be applicable.
10. The case in hand, the date of default mentioned is 30.06.2018 and the date of demand notice is 14.06.2019. When a limitation period is expired during the period between 15.03.2020 to 28.02.2022 the directions are specifically given in para-III of the order. The directions clearly give 90 days further period from

01.03.2022. It is also mentioned that in the event of actual balance period of limitation remains is greater than 90 days from 01.03.2022 in that case longer period shall apply. So if the date of default is taken into consideration as 30.06.2018 the applicant will have only 90 days limitation period to file an application. If date of default as per application as 24.12.2019 is considered there is no invocation of guarantee. The strange thing is that the applicant has given different dates of default, the dates and notice are not co-relating to each other. It shows that the applicant itself is not sure that when there was default. The correct procedure is not followed to invoke guarantee

11. The Application CP IB 237 (AHM) 2022 was filed before court 1 on 31 March 2022. The guarantee given by the respondent is a joint agreement along with other guarantors as common guarantee agreement to procure loan from the applicant in respect of M/s Yogiraj Ginning and Oil Industries Private Limited. A separate CIRP proceedings are filed before this Tribunal along with action under SARFESI Act before DRT. It is observed from the application filed in respect this and other Guarantors that the applicant has not properly invoked the guarantee and thereby does not get necessary coverage under Limitation and orders

have been separately passed in those applications accordingly.

12. The contents of this application are same. It was before court No.1 and then transferred before this bench. In view of similar nature of this application and considering points argued by they applicants, this application is also libel to dismissed.
13. Hence, the petition itself is defective as well as not within the period of limitation. Hence, we pass the following order:-

ORDER

- I. Accordingly, CP(IB) No. 237/NCLT/AHM/2022 is rejected.

-Sd-

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

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)