



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

ITEM No.301
CP(IB)/72(AHM)2022

Proceedings under Section 94 IBC

IN THE MATTER OF:

Vijyaben Rasikbhai Thumar
(Personal Gaurantor)

V/s

Premraj Ramratan Laddha Liquidator of Corporate Debtor

.....Applicant

.....Respondent

Order delivered on 21/03/2024

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/72/AHM/2022

Filed under Section 94 of the Insolvency & Bankruptcy Code, 2016

*In the matter of **Ms. Vijyaben Rasikbhai Thumar***

Ms. Vijyaben Rasikbhai Thumar

Address: 4th Floor, Sumangal Apartment,
4-Narmada Park Corner,
Vidyakunj Society Main Road,
Rajkot, Gujarat-360005.

... Applicant

VERSUS

- 1. Premraj Ramratan Laddha,**
RP/Liquidator of Corporate Debtor
304, Abhijit-3, Above Pantaloon,
Mithakhali-Law Garden road,
Ellisbridge, Ahmadabad.
- 2. State Bank of India**
Stressed Assets Management Branch,
Paramsiddhi Complex,
2nd Floor, Opp. V.S. Hospital,
Ellisbridge, Ahmadabad.
- 3. Oriental Bank of Commerce.**
Mangal Bhuvan, Yoginiketan Plot,
Nirrnala Convent School Road,
Rajkot - 360 007.
- 4. Corporation Bank**
Nijanand, Dhebar Road,
P.B. No. 556
Rajkot -360 002
- 5. State bank of Hyderabad**



(Merged with State Bank of India)
Asharam Road Branch, Opp. A.U.D.A.
Nagindas Chamber,
Usmanpura Ashram Road,
Ahmedabad -380 041

6. International Asset Reconstruction Company Pvt. Ltd.

A/508, 5th Floor,
2015 Atrium Kanakia Saces,
Andheri Kurla road, Andheri (E),
Mumbai -400 069.

...Respondents

Order pronounced on : 21.03.2024

CORAM:

Mr. SHAMMI KHAN, MEMBER (JUDICIAL)

Mr. SAMEER KAKAR, MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant/PG : Mr. Rajesh Bohra, Advocate

For the Respondent/SBI : Ms. Noopur Dalal, Advocate

ORDER

1. This application has been filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 by the Applicant/Personal Guarantor to initiate proceeding in terms of in terms of Rule 6 of the IB (AAA for IRP for PGCD) Rules, 2019.

2. The present application is filed by Ms. Vijyaben Rasikbhai Thumar who is stated to be a guarantor to the Corporate



Debtor- New Tech Forge and Foundry Ltd. On perusal of the application it is observed that, the Deed of Guarantee is not annexed to the present application.

3. It is stated that the Corporate Debtor namely, New Tech Forge and Foundry Ltd was dissolved vide order dated 18.12.2019 passed in I.A. No.374 of 2019 in CP (IB) No.21/10/NCLT/AHM/2017.
4. However, the Applicant has filed copy of the Notice which refers to Demand Notices dated 30.11.2009 issued to the Corporate Debtor by the Respondent/State Bank of India U/s 13(2) of SARFAESI Act, 2002 which is annexed as **Annexure-4** with the application.
5. On perusal of the notice issued by the Respondent/State Bank of India, it is observed that said notice was issued intimating only for the purpose of enforcing security interest created by Corporate Debtor and not to invoke any Personal Guarantee.



6. The learned Counsel for the Applicant may be right in his submission that by virtue of Demand Notice dated 30.11.2009 issued U/s 13(2) of the SARFAESI Act, 2002, the Applicant was also asked to make the payment of dues. But there is neither anything on record to show that any other notice has been issued by Respondent Bank to the Applicant in the capacity of Personal Guarantor to invoke the Personal Guarantee nor any steps have been taken by the Respondent Bank to recover the dues from the Applicant by sale of her personal assets except secured asset.

7. The Hon'ble NCLAT in its decision in the matter of ***Amanjyot Singh Vs. Navneet Kumar Jain & Ors.*** (Company Appeal (AT) (Insolvency) No. 961 of 2022) has upheld the view taken by NCLT, Delhi dismissing an application filed by the Appellant under section 94. The relevant para of the said order is reproduced below:-

“7. Notice under Section 13, sub-section (2) is issued by the Bank for enforcing the security interest. Section 13, sub-section (1) and (2) of the SARFAESI Act is as follows:-



"13. Enforcement of security interest.--(1)

Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) *Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).*

Provided that—

(i) the requirement of classification of secured debt as non-performing asset under this subsection shall not



apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of Company Appeal (AT) (Insolvency) No. 961 of 2022 6 security documents executed in favour of the debenture trustee."

8. *The definition of 'borrower' given in SARFAESI Act under Section-2 (f) is wide enough to include a Guarantor also. Section 13 is for enforcement of security interest. The borrower within the meaning of Section 13, sub-section (2) shall obviously include the Guarantor also.*

12. *We, thus, are satisfied that foundation which was laid down by the Appellant for initiating the CIRP against the Appellant, was not sufficient to admit Section 94 Application and initiate the CIRP against the Appellant. We may further notice that Section 10 Application against the Corporate Debtor has already been*



*admitted and CIRP against the Corporate Debtor had been initiated. The case taken up by the Bank being categorical and clear that **no steps have been taken by the Bank against the Appellant, there is no cause for the Appellant to pray for initiation of CIRP against the Appellant – the Personal Guarantor.** We, thus, do not find any good ground to interfere with the impugned order in this Appeal. The Appeal is accordingly dismissed. No costs.”*

8. The Applicant through additional affidavit dated 15.02.2024 has also attached a copy of Notice dated 30.05.2008 issued by DRT, Ahmedabad as well as O.A. No.60 of 2008 filed by State Bank of India & others under section 19 of the Recovery of Debts and Bankruptcy Insolvency Resolution and Bankruptcy of Individuals and Partnership Firms Act, 1993 against Principal Borrower and other Guarantors. However, mere filing of such application for recovery against Principal Borrower and other Guarantors under section 19 of RDB Act does not amount to invocation of guarantee. As it is the case of the Applicant that the said O.A. is pending adjudication of debt and liability against the Applicant and



till date no recovery certificate is issued by Debt Recovery Tribunal, Ahmedabad.

9. The Applicant has also filed written submissions to distinguish the judgment of Hon'ble NCLAT in the matter of **Amanjyot Singh Vs. Navneet Kumar Jain & Ors.** It is submitted by the Applicant that the default is evidenced by the original application filed by the Banks before the Debt Recovery Tribunal (DRT) Ahmedabad against the corporate debtor and guarantors, inclusive of the petitioner herein. As per the ruling of the Honorable Supreme Court in Civil Appeal No. 23988 of 2017, **B.K. Education Service Pvt. Ltd. Vs Parag Gupta and Associates**, the date of default of a financial debt of the bank Coincides with the classification of the debt as Non-Performing Asset (NPA).
10. The Applicant, being a guarantor, assumes co-extensive liability with the borrower upon the account becoming NPA. Hence, the filing of the original application before the DRT tantamounts to invoking the guarantee, thus establishing the default of the petitioner. Further, filing of the original



application before the DRT, signifies the invocation of the guarantee.

11. The aforementioned Judgment relied upon by the Applicant is not applicable in the present case as in the present case no document is annexed with the application which suggests that guarantee is invoked by the Respondent Bank. Mere filing of original application before the DRT not tantamount to invoking the guarantee as neither debt nor liability against the Applicant as guarantor has been either adjudicated or crystalized.

12. Therefore, by looking at the facts of the present case and relying on the decision of Hon'ble NCLAT *supra* we are of the view that the present application is filed without any cause and is premature. Hence, **CP/IB/72/AHM/2022** stands dismissed with liberty.

-sd-

-sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)