

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**AHMEDABAD**

**COURT - 2**

ITEM No.302

**C.P. (IB)/291/AHM/2023**

**Order under Section 94(1) IBC**

**IN THE MATTER OF:**

NITIN JAMNADAS THAKKAR

.....Applicant

Vs

AXIS BANK LIMITED

.....Respondent

**Order delivered on: 14/02/2024**

**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. 291 / NCLT / AHM / 2023**

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

**In the matter of:**

**Mr. Nitin Jamnadas Thakkar,**

Residing at:

Flat No. 501 & 502,

5<sup>th</sup> Floor, B-Wing, Skiffle, Pant Nagar

Shramsaphalya, Ghatkopar (East)

Mumbai – 400077.

**.....Applicant**

**VERSUS**

**1. Axis Bank Limited**

Having Branch Office at:

3<sup>rd</sup> Floor, Trishul,

Opp. Samartheshwar Temple,

Near Law Garden, Ellisbridge,

Ahmedabad – 380 006

**2. IDBI Bank Limited**

Having office at:

IDBI Tower, NMG - West I,

4<sup>th</sup> Floor, Plot No. C- 7, G Block,

Opp. NSE, BKC, Bandra (E),

Mumbai – 400 051

**3. Bank of Maharashtra,**

Having Branch office at:

1<sup>st</sup> Floor, Janmangal, 45/47,

Mumbai Samachar Marg, Fort,  
Mumbai – 400 001

4. **Kotak Mahindra Bank Limited,**

Having office at,  
27, BKC, C - 27,  
G Block , Bandra (East),  
Mumbai – 400 051

**.....Respondents**

**Order pronounced on: 14.02.2024**

**Coram:**

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

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

**Appearance:**

For the Applicant : Mr. Harmish Shah, Adv

For the Respondent : Mr. Raju Kothari, Adv. a.w Mr. Anip  
Gandhi, Adv. R-4

**JUDGMENT**

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.

The prayer made is to initiate the Insolvency Resolution Process (hereinafter referred as "IR Process") against the Applicant/Debtor who is the Personal Guarantor of M/s. Maruti Koatsu Cylinders Limited (hereinafter referred as the "Corporate Debtor") for an amounts of Rs.15,38,78,506.86/; 18,26,05,060/-; 10,32,40,000/- and 2,76,93,067.86/- in relation to the credit facilities extended by IDBI Bank Limited; Axis Bank Limited; Bank of Maharashtra and Kotak Mahindra Bank Limited respectively in favour of Corporate Debtor.

2. From the facts of the matter submitted and the documents it is observed that the CIRP initiated against the Corporate Debtor M/s Maruti Koatsu Cylinders Limited was completed and the Corporate Debtor was restored on resolution wherein a new applicant has taken over the affairs of the company on approval of the Resolution Plan by this Adjudicating Authority. Accordingly, all the liabilities and debts of the Corporate Debtor were discharged and a fresh and new entity has taken over its functioning. The applicant had given a personal guarantee in favour of various financial creditors for having agreed to grant this facility.

3. This application filed by the Personal Guarantor for the stated facility under section 94 of the IBC 2016 is examined under the relevant provisions of Sec 60(5) of IBC 2016. The jurisdiction of the Personal Guarantor who has executed the guarantee is not discharged of his liability of the corporate debtor in his individual capacity and it exists to all those in whose favour such guarantee is issued and the Corporate Debtor has been taken over by a new entity who is not a party any more to the stated guaranteed debt. The respondents in the matter are four financial creditors of which Axis Bank Limited is in Ahmedabad jurisdiction while others are not in this jurisdiction as their Head Offices are not in Ahmedabad. One of the respondents also appeared in the matter and raised certain objections.
4. Since it is a matter of invocation of guarantee, a recall notice was issued on 15.06.2015 in relation to the guarantee given by the personal guarantor which has not been acknowledged by the guarantor. This application has been filed on 08.12.2023 after a lapse of 8 years and 6 months (approx). Limitation in filing the application before this tribunal which is 3 years. In view of the same it is

observed that the application is time barred as neither the demand notice has been replied nor an application has been moved for insolvency under personal guarantee has been made within the prescribed time limit.

5. In this regard, an order passed by NCLT, Amravati bench in CP IB No.33/95/AMR/2022 dated 17.02.2022 is referred by this Tribunal. The law of limitation under Sec 137 of the Limitation Act, 1963 applies to the IBC 2016 as decided by Hon'ble Supreme Court of India, Hon' ble NCLAT and as amended in Sec 238A of the IBC 2016.

6. Hence we pass following order:

**ORDER**

The application is dismissed.

Interim memorandum, if any, had initiated on filing this application is removed and any action by any financial creditor that could be brought in under any other provisions of this or any other Act, applies.

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**DR. V. G. VENKATA CHALAPATHY**

**CHITRA HANKARE**

**MEMBER (TECHNICAL)**

**MEMBER (JUDICIAL)**