



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.302
RCP(IB)/1(AHM)2024
(CP(IB)/124(AHM)2021)

Order under Section 100 IBC

IN THE MATTER OF:

Santosh Kumar Dhirajlal Pathak
V/s
Technology Development Board & Ors.

.....Applicant

.....Respondent

Order delivered on: 17/05/2024

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)



IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT - II)

RCP(IB)/1/ NCLT / AHM / 2024

[CP(IB) No. 124/ NCLT / AHM / 2021]

[Under Section 94 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 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:

Santosh Kumar Dhirajlal Pathak

...Applicant

Versus

Technology Development Board & Ors.

...Respondents

Order pronounced on 17.05.2024

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

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



MEMO OF PARTIES

Santosh Kumar Dhirajlal Pathak

C-41, Troika Apartment,
3rd X Lane, Lokhandwala,
Andheri West,
Mumbai 400053

...Applicant

Versus

- 1. Technology Development Board**
Department of Science and Technology,
Ministry of Science and Technology,
Vishwakarma Bhawan, Wing 'A',
Ground Floor, Shaheed Jeet Singh Marg,
New Delhi-110016
- 2. Stressed Asset Stabilization Fund**
5th Floor, IDBI Tower,
IDBI Bank Ltd.,
WTC Complex,
Mumbai – 400005
- 3. Industrial Development Bank of India**
Western Zonal Office,
Nariman Bhawan,
227, Vinay K. Shah Marg,
Nariman Point,
Mumbai-400021
- 4. Gujarat State Financial Corporation**
Block No.10, Udhyog Bhavan,
Sector-11, GH-4,
Gandhinagar-382017



5. **Oriental Bank of Commerce**

Plot No.5, Institutional Area,
Sector-32,
Gurugram, Haryana - 122001

6. **Andhra Bank**

116, Sourabh, Andheri Kuria Road,
Andheri (East),
Mumbai-400093

7. **Gujarat Oleo Chem Limited**

Through its Liquidator
Mr. Anil Goel,
E-10A, LGF, Kailash Colony,
Greater Kailash -I,
New Delhi - 110048

...Respondents

Present:

For the RP : Mr. Amrish Gandhi, PCS

For the Applicant : Mr. Arjun Sheth, Adv. a.w Mr. Rajiv Chawla,
Adv.

For the Respondent : Mr. Kunal Vaishnav, Adv. for R-2

RP in Person : Mr. Samir Marathe



JUDGEMENT

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.
2. In Part I of the application Gujarat Oleo Chem Ltd. is mentioned as Corporate Debtors qua which the personal guarantee was given by the applicant. In Part II no business particulars of guarantor is given. In Part III Respondent no.2 i.e., Stressed Asset Stabilization Fund is mentioned as Financial Creditors. No details are there in the application in respect to date of defaults, invocation of guarantees and other financial creditors. The applicant has mention in Part III as under:

<u>PART-III</u>		
<u>PARTICULARS OF DEBT [CREDITOR WISE, AS APPLICABLE]</u>		
4.	Amount of debt in default	Not Applicable
5.	Interest or penalties, if any	Not Applicable



6.	Date when the debt was due	Not Applicable
7.	Date when the default occurred	Not Applicable

3. On presentation of the application by the Applicant/Personal Guarantor, this Authority vide order dated 23.11.2023 has confirmed the appointment of the Resolution Professional viz., Mr. Samir Ganeshbhai Marathe having Registration No. IBBI/IPA-001/IP-P00830/2017-2018/11415 & directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed by him on 13.12.2021 recommending the admission of the application filed under section 94 of IBC, 2016.
4. Respondent no.2 i.e., Stressed Asset Stabilization Fund in his reply submitted that it filed original application before DRT-II, Ahmedabad against Respondent No.7 and others including Petitioner/Guarantor vide Original Application No.86/2017, which was adjudicated on 22.11.2019. It further submitted Recovery Certificate (RC No.118/2019) has been issued wherein demand/notice dated 13.11.2020 for Rs.161,66,79,295/- including interest as on 13.11.2020 and



further, interest @12% from 14.11.2020 plus cost of Rs.1,75,000/- was issued to Respondent No.7 & others including petitioner/guarantor.

5. Respondents no.1 & 3 to 7 neither filed any reply nor present during the course of proceeding.
6. We have heard the learned Counsel for applicant and respondent no.2 and perused the documents on record. We have also gone through the report dated 13.12.2021 filed by the RP.
7. There is no information placed in the application for invocation of guarantee by any financial creditors i.e., Respondents no.1 to 6. As there is no invocation of guarantee which is mandatory to prefer the application under Section 94 of IBC, the application is not maintainable.
8. Applicant by way of further affidavit e-filed on 06.05.2024 produced additional document at much belated stage and that too after 2 years 4 months from the date of the filing of report of RP under Section 99 of IBC, 2016. For filing documents no permission of the tribunal was sought by the applicant. There is no pleading about these documents in the petition. Hence,



this document cannot be relied upon at this stage while passing an order under Section 100 of IBC, 2016.

9. Applicant by way of pursis also place on record certain judgements which are not relevant to the fact of present application.
10. In view of the above, we pass the following order:

ORDER

RCP(IB) No. 1 of 2024 [CP(IB) No. 124 of 2021] is rejected.

-sd-

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

-sd-

**CHITRA HANKARE
MEMBER (JUDICIAL)**

PS