

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1



ITEM No.303- C.P.(IB)/69(AHM)2024
With
ITEM No.304-IA/436(AHM)/2024

Proceedings under Section 94 IBC

IN THE MATTER OF:

HARIOM RAMBABU GUPTA

.....Applicant

.....Respondent

Order delivered on: 21/06/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

(Hybrid Mode)

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**

**I.A. No.436 (AHM) 2024
And
CP/IB/69/AHM/2024**

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

*In the matter of **Mr. Hariom Rambabu Gupta***

Mr. Hariom Rambabu Gupta

Address:
Ramkishan Nagar,
Gadana Pur Chaudhari,
Kannauj,
Uttar Pradesh – 209 722

... Applicant/ Personal Guarantor

VERSUS

1. Central Bank of India

Address:
Zaveriparu,
Nr. LIC of India,
Unjha, Mehsana – 384170

2. ICICI Bank Limited

Address:
Ground Floor, Jayshree Building,
Nr. Kokila Trading,
Highway Road, Mehsana – 384002

...Respondents/Financial Creditors

Order pronounced on: 21.06.2024

CORAM:

Mr. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

Mr. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)



APPEARANCE:

For the Applicant/IRP : Mr. Kamil Lokhandwala, Adv.
For Personal Guarantor : Mr. Pratik Thakkar, Adv.
For Financial Creditor : Mr. Sandeep C Bhatt, Adv.

ORDER

1. The Present Application is filed on 29.01.2024 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 Bankruptcy Process for Personal Guarantors to Corporate Debtor) Rules, 2019 to initiate the Insolvency Resolution Process (hereinafter referred to as "IR Process") against the Applicant/Debtor who is the Personal Guarantor of **M/s Jay Dwarkadish Agri International LLP** for a total default amount of **Rs.6,52,29,981.82ps.** in relation to the credit facility extended by the Respondent Banks namely the **Central Bank of India and ICICI Bank Limited.**
2. The brief facts of case are that the Corporate Debtor **M/s Jay Dwarkadish Agri International LLP** vide Sanction Letter dated 21.03.2022 availed Term Loan of Rs.307.00 Lakhs and CC limit of Rs.100.00 Lakhs for Working Capital



from Central Bank of India for which the Applicant executed Deed of Guarantee in favour of Central Bank of India which is annexed a **Annexure-B** with the I.A. No.436/2024.

3. The applicant also availed as borrower OD cent Credit Facility as Prop. of M/s Shree Krishna Trading Co., Housing Loan as well as Personal Loan Facilities from Central Bank of India as well as ICICI Bank Limited. Details of which are as under:-

Nature of facility	Account No.	Bank	Total Outstanding amount (Rs.)
Home Loan	521635929 8	Central Bank Of India	22,26,648.00
OD cent Business	520687264 3	Central Bank Of India	1,96,78,192.00
GECL TL 1	523256006 4	Central Bank Of India	17,04,014.00
GECL TL 2	521083451 1	Central Bank Of India	11,52,636.00
Loan/ Credit facility (Personal)	UPMEH000 43411067	ICICI Bank	04,92,970.00
Loan/ Credit facility (Personal)	UPUNJ0004 26724	ICICI Bank	09,85,957.00

4. However, after availing the aforesaid Credit Facilities, the Corporate Debtor failed to maintain financial discipline as per terms and conditions of the loan agreement due to



which loan account became irregular. Consequently, the said loan accounts of the Corporate Debtor were classified as NPA on 24.04.2023 and recalled by Central Bank of India through Demand Notice dated 24.04.2023 issued U/s 13(2) of the S.A.R.F.A.E.S.I. Act, 2002 demanding the outdating amount from the corporate debtor along with other personal guarantors, which is annexed as **Annexure-D & E** with the application.

5. Further, after availing the aforesaid OD cent Credit Facility as Prop. Of M/s Shree Krishna Trading Co., housing Loan as well as Personal Loan Facilities from Central Bank of India as well as ICICI Bank Limited, the Applicant also failed to maintain financial discipline as per terms and conditions of the loan agreement due to which aforesaid loan accounts also became irregular. In furtherance of the same Central Bank of India as well as ICICI bank also issued Loan Recall Notices on 24.04.2023 and 18.07.2023 by which the applicant was called to repay the outstanding amount respectively which are annexed as **Annexure-A, B, C, F and G** along with the application.



6. The Central Bank of India has filed an affidavit in reply filled on 06.05.2024 bearing dairy no. D3852, in which following contentions are raised by the respondent bank:
- i. That, the present applicant along with other partners and corporate debtor filed an application under section 17 of the S.A.R.F.A.E.S.I. Act, 2002 before the DRT-II at Ahmedabad by which the action taken under section 13 of the act of 2002 which was initiated by the bank for recovery of the amount due from the applicant and corporate debtor. The Ld. DRT-II deferred the process of taking over the physical possession of the mortgaged property on the undertaking of the applicant that he will hand over the property once the sale is successful and sale certificate would be issued.
 - ii. The Financial Creditor -Central Bank of India, meanwhile held the public auction of the property belonging to Jay Dwarkadhish Agri International LLP - Corporate Debtor under the provisions of the SARFAESI Act, 2002, which was successful and property was sold for an amount of Rs. 3,99,08,000/-, upon receipt of the payment as per



Security Interest Enforcement Rules, 2002, the authorized officer of the bank had confirmed the sale in favor of auction purchaser.

- iii. However, the applicant backout from the undertaking given by him before the Ld. DRT-II, Ahmedabad, which was recorded in the order dated 06.01.2024 passed in SA 1/2024 and instead, files an application seeking stay on the proceedings on the ground of filing of present petition under section 94 of the Code, 2016 and moratorium as per section 96, this itself shows that how the applicant did not approached this Hon'ble Tribunal with clean hands, which defeat the object of the section 94 of IBC itself, hence the application filed by the applicant is required to be dismissed by this Hon'ble Tribunal.
- iv. It is pertinent to note here that even property in question, which was sold by the answering respondent does not belongs to applicant herein and the same is belonging to Corporate Debtor Jay Dwarkadhish Agri International LLP and hence also, the moratorium under section 96 would not come in the way of financial creditor Central Bank of India, however, the applicant has audacity to



mention in FORM at clause no. 14 "No securities held in Corporate Debtor", which construed concealment of the correct and material facts.

7. The Resolution professional has submitted his report under section 99 of IBC through IA/436/2024 on 05.03.2024 bearing diary number E585. In the said report the Resolution Professional has recommended the following along with the grounds for the same.

“6. Recommendation: Based on my examination of the application and other relevant facts, I have ascertained that:

(a)The application satisfies the requirements set out in section 94 of IBC.

(b) The applicant has provided information and explanations sought by me under sub section (4) of section 99 of IBC.

Henceforth, I recommend accepting the application filed by the personal guarantor, Mr. Hariom Rambabu Gupta to initiate insolvency resolution process.

The grounds on which the recommendation for acceptance of the application filled by applicant u/s 94 are:

“a) I have examined the application CP (IB) No.69 (AHM) 2024 and the same is found to be satisfying all the ingredients of Section 94 of IBC.



b) 2. I have not received any evidence of repayment of the debt claimed in Sec.94 petition from Mr. Hariom Rambabu Gupta.

c) I have not received any document whereby the Personal Guarantee agreement was cancelled by both the parties.

f) I have not received any order of court or any other forum whereby the personal guarantee agreement was cancelled or set-aside.

8. The Applicant has filed copy of the Demand Notice which refers to Demand Notices dated 24.04.2023 issued to the Corporate Debtor by the Central Bank of India U/s 13(2) of SARFAESI Act, 2002 which is annexed as **Annexure- D & E** with the application.

9. On perusal of the notice issued by the Central Bank of India it is observed that said notice was issued intimating only for the purpose of enforcing security interest created by Corporate Debtor& the Applicant and not to invoke any Personal Guarantee.

10. The learned Counsel for the Applicant may be right in his submission that by virtue of Demand Notice dated 24.04.2023 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 not been issued by Central Bank of India to the Applicant in the capacity of Personal Guarantor to invoke the Personal Guarantee nor any steps have been taken by the Central Bank of India to recover the dues from the Applicant by sale of his personal assets except secured asset.

11. 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.”

12. The Applicant/Personal Guarantor has also referred to other Demand Notices and Recall Notices issued by Central Bank of India and ICICI Bank Limited, for the dues of Credit loan Facilities, Housing loan facilities and personal loan facility availed in personal capacity or as a proprietor of M/s. Shree Krishna Trading Co. in the capacity of the borrower. The action of the Respondent banks against the present applicant is in the capacity of the borrower. However section 94 of the Insolvency and Bankruptcy Code 2016 is meant



for Personal Insolvency Resolution Process against the Personal Guarantor of the Corporate Debtor only.

13. Where as in the present case as explained above the Personal Guarantee of the Applicant/Personal Guarantor has not been invoked by the Central Bank of India in respect of the Corporate Debtor M/s Jay Dwarkadish Agri International LLP, till date.
14. 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/69/AHM/2024** stands dismissed.
15. In view of the above, **I.A. No.436 of 2024** is also hereby rejected and is disposed of.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)
RS

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)