

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**AHMEDABAD**

**DIVISION BENCH**

**COURT - 1**

ITEM No.206

**C.P.(IB)/195(AHM)2024**

**Proceedings under Section Sec, 94 of IBC**

**IN THE MATTER OF:**

Kalpana Vara Personal Guarantor of Srivardhan Socio  
Development Foundation

**.....Applicant**

v/s

**.....Respondent**

Canara Bank & Anr.

**Order delivered on: 06/06/2024**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)

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

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

The case is fixed for pronouncement. The order is pronounced in the open court,  
vide separate sheet.

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**SAMEER KAKAR  
MEMBER (TECHNICAL)**

-sd-

**SHAMMI KHAN  
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, AHMEDABAD**

**CP/IB/195/AHM/2024**

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

*In the matter of **Mrs. Kalpana Vara***

**Mrs. Kalpana Vara,**

Personal Guarantor of Srivardhan Socio Development Foundation  
Address: E6, Heritage Apartment,  
Nr. Raj Tower, Mandav Road,  
Dahod - 389151

**... Applicant**

**VERSUS**

**1. Canara Bank,**

Anand Branch,  
Station Road,  
Gamdi Vad, Anand, Gujarat – 388001

**...Respondent No.1**

**2. M/s MAS Financial Services Limited,**

6, Ground Floor, Narayan Chambers,  
B/h Patang Hotel, Ashram Road,  
Ahmedabad – 380009

**...Respondent No. 2**

**Order pronounced on: 06.06.2024**

**CORAM:**

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**

**SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE:**

For Applicant

: Mr. Masoom Shah Adv a.w.  
Mr. Dhruvin. N. Dossani, Adv.

## **ORDER**

1. The Present Application is filed on 24.04.2024 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 who is the Personal Guarantor of Corporate Debtor M/s Srivardhan Socio Development Foundation for a default amount of **Rs.63,41,351/-** along with 12% interest from 21.03.2013 and **Rs. 3,82,35,199/-** along with 15% interest from date of filling of suit till judgement and 9% per annum thereafter in relation to the credit facility extended by the Respondents namely the Canara Bank and M/s MAS Finance Limited to the Corporate Debtor.

2. The brief facts of case are as under:-

- i. The corporate debtor **M/s Srivardhan Socio Development Foundation** is a Micro Finance

Institution (MFI) engaged in the business of providing micro-finance to poor and marginalized section of society. The corporate debtor was concentrated towards providing loans to underprivileged segment, more specifically women from backward communities, enabling them to start their business and sustain a decent life and help in nation-building.

- ii. On 08.07.2008 the corporate debtor availed advance facilities from Canara Bank for which the applicant assumed the role of personal guarantor on behalf of the corporate debtor for a sum of Rs. 50,00,000.00 along with the applicable interest. The guarantee agreement dated 08.07.2008 is being annexed hereto as **Annexure-F**.
- iii. Further on 05.10.2009, the applicant further committed to the role of personal guarantor for the corporate debtor where by the limit of personal guarantee was increased to Rs. 1,00,00,000. The copy of the guarantee agreement dated 05.10.2019 is being annexed hereto as **Annexure-I**.

- iv. In January 2013 the corporate debtor availed a term loan from M/s MAS Finance Limited for an amount of Rs. 2,95,00,000 for which the applicant stood as a personal guarantor along with co-guarantor.
- v. On 11.01.2013, the Canara Bank classified the account of the Corporate Debtor as a non-performing asset (NPA).
- vi. On 21.10.2013, Canara Bank initiated legal proceeding by filling an Original Application bearing no. 101 of 2013 before the Debt Recovery Tribunal II, at Ahmedabad for recovery of Rs. 63,41,351/- against the corporate debtor and the personal guarantors.
- vii. On 08.07.2015, the Debt Recovery Tribunal II at Ahmedabad passed a decree in favour of Canara Bank and against the corporate debtor as well as the personal guarantors and a recovery certificate for an amount of Rs.63,41,351/- was issued. The copy of decree and the recovery certificate dated 08.07.2015 is being annexed here to as **Annexure-J**.

- viii. On 24.06.2016, M/s MAS Finance Limited, served a legal notice through which the account of the corporate debtor was classified as Non-performing Asset (NPA) and called upon the corporate debtor and the personal guarantors to make payment of debt amounting to Rs.3,82,35,199/- along with the interest.
- ix. On 15.07.2015, M/s MAS Finance Limited, filled a Civil Suit before the Ld. Principle Civil Judge, Dahood for recover of RS. 3,82,35,199. On 17.07.2015 a decree of Rs. 4,40,00,000 was passed against the Corporate Debtor and the applicant. The copy of the Judgement dated 17.07.2015 is here to annexed as **Annexure-K**.
- x. On 18.08.2017, an Execution petition bearing no.: EXE S No. 6/2017 which before the Ld. Principle Senior Civil Judge, Dahod filled by M/s MAS Finance Limited. On 19.02.2018 an order was passed in EXE S No. 6/2017 issuing warrant was issued through which the residential property of the applicant was attached and the aforesaid property was sold through public auction and in furtherance of that the sale certificate

was issued by the court which was registered before the sub-registrar, Dahod on 15.03.2021. The copy of order dated 19.02.2018 passed in execution Petition is attached hereto as **Annexure-M**.

- xi. It is the case of the Applicant / Personal Guarantor that the personal guarantee was invoked by the Respondent / Financial Creditor by way of an order dated 08.07.2015 of Hon'ble DRT- Ahmedabad. The provisions of Section 94 of the IBC enforced w.e.f. 01.12.2019 and this application was filed before this Tribunal on 24.04.2024.
3. We have heard the Learned Counsel for the Applicant / Personal Guarantor and perused the documents provided in the Application.
4. It is seen that the Applicant/Personal Guarantor has placed reliance of Guarantee Agreement dated 08.07.2008 as well as Guarantee Agreement dated 05.10.2009, which was given in favour of the Corporate Debtor for the creditor facilities availed from the Respondent / Financial Creditor.

5. The Applicant / Personal Guarantor has also placed a copy of the order dated 08.07.2015 passed by the Debt Recovery Tribunal-II, Ahmedabad, in O.A. No: 101 of 2013.
6. The Applicant / Personal Guarantor has also placed a copy of the Decree dated 17.07.2015 passed by the Ld. Principle Civil Judge, Dahood, in Civil Suit No.20/2015.
7. The date of default occurred on 11.01.2013 when recall notice was issued by Canara Bank and on 24.06.2015 when Legal Notice was issued by M/s MAS Financial Services Limited.
8. It is the case of the Applicant/Personal Guarantor that the she has voluntarily invoked the provisions of section 94 of the IBC for seeking initiation of Insolvency Resolution Process against herself for which there is no limitation period.
9. The learned counsel for the applicant has relied on the judgement of Hon'ble Supreme Court **“B.K. Educational Services (P) Limited vs. Parag Gupta & Associates”**

passed in Civil Appeal No. 23988 of 2017. The judgement provides for the following:

*“It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets 53 attracted. “The right to sue”, therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.”*

10. However, personal guarantee was invoked by the Respondents/Financial Creditors by way of an order dated 08.07.2015 of Hon’ble DRT-II Ahmedabad as well as by decree dated 15.07.2015 passed by Ld. Principle Civil Judge, Dahod and this application was filed before this Tribunal on 24.04.2024.

11. Hon’ble Supreme Court ***in Suo Moto WP (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation*** held that the period i.e. 15.03.2020 to 28.02.2022 is excluded for the purposes of computing limitation prescribed under any

general or special laws in respect of all judicial or quasi-judicial proceedings in light of the spread of the wave of the Covid-19 pandemic.

12. Even after exclusion of aforesaid 15.03.2020 to 28.02.2022 period for the purposes of computing limitation, the present Petition is filed after lapse of almost 6 ½ years.

13. Section 238A of the IBC stipulates:-

*“Limitation.- The provision of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeal before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.*

14. As per judgments of Hon'ble Supreme Court in case of **Kotak Mahindra Bank Limited Vs A. Balakrishnan and Another** [(2022) 9 SCC 186], **Dena Bank (Now Bank of Baroda) Vs. C. Shivakumar Reddy**, (2021) 10 SCC 330] in SCC paras 136 and 141, **Asset Reconstruction Company Ltd. Vs Hotel Poonja International Pvt. Ltd.** (2021)7 SCC 352, **Tottempudi Salalith Vs.**

**State Bank of India & Ors.** Civil Appeal No.2348/2021 decided on 18.10.2023 has already held that that recovery certificate issued by DRT creates a fresh cause of action of three years to initiate proceedings under the IBC.

15. The judgement of Hon'ble Supreme Court "**B.K. Educational Services (P) Limited vs. Parag Gupta & Associates**" relied by the Applicant is applicable for the application filed under 10 of the Insolvency and Bankruptcy Code, 2016 and not on the application filed under section 94 of the Code. Hence we are of the opinion that this case so relied on by the learned counsel of the applicant is not applicable to the facts and circumstances of the present case.
16. Hence, the present petition was filed beyond the period of 3 years from the date of invocation of the guarantee, as in the present case, the guarantee was invoked by way of judgment of the Hon'ble DRT dated 08.07.2015 and decree dated 15.07.2015.

17. Therefore, the present petition i.e. **Company Petition (IB) No. 195 of 2024** is dismissed being hopelessly barred by limitation.

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**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**  
RS

**-sd-**

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**