

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

ITEM No.305
CP(IB)/77(AHM)2024

Proceedings under Section 94 IBC

IN THE MATTER OF:

Mahesh Amrsinh Vara Personal Guarantor of Srivardhan Socio**Applicant**
Development Foundation

Vs**Respondent**

Canara Bank

Order delivered on 22/02/2024

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/77/AHM/2024

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

*In the matter of **Mr. Mahesh Amarsinh Vara***

Mr. Mahesh Amarsinh Vara,

Personal Guarantor of Srivardhan Socio Development
Foundation.

Having Address at:

E6, Heritage Apartment, Nr. Raj Tower,
Mandav Road,
Dahod- 389 151

... Applicant

Versus

1. Canara Bank

Railway Station Rd,
Near D N High School,
Gandi Vad, Anand, Gujarat 388001

2. MAS Financial Service Ltd.

6, Ground Floor, Narayan Chambers,
B/h Patang Hotel, Ashram Road,
Ahmedabad – 38009

... Respondents

Order pronounced on: 22.02.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : Mr. Masoom Shah, Advocate

For the Respondent :

ORDER

Per: Bench

1. The Present Application has been e-filed on 23.01.2024 and the same was filed through physical mode on 08.02.2024, by the Applicant / Personal Guarantor of Corporate Debtor (M/s. Srivardhan Social Development Foundation) under Section 94 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") to initiate the Insolvency Resolution Process 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 Guarantor to Corporate Debtor) Rules, 2019.
2. The facts of the Case are as follows:
 - a) It is stated that the Applicant is the Personal Guarantor of Corporate Debtor (M/s. Srivardhan Social Development Foundation) and duly authorized to file captioned application with National Company Law Tribunal at Ahmedabad to initiate Insolvency Resolution Process 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 Guarantor to Corporate Debtor) Rules, 2019.

- b) It is stated that on January 11, 2013, the debt of the corporate debtor became due as a loan recall notice was sent.
- c) It is stated that the Applicant had executed the Guarantee Agreement on two different occasions dated 08.07.2008 and 05.10.2009.
- d) It is indicated that Canara Bank, the financial creditor, filed an Original Application (No. 101 of 2013). In this matter, a decree was passed against the applicant by the Hon'ble Debt Recovery Tribunal II, Ahmedabad. Subsequently, a recovery certificate was issued for the amount of 63,41,351/-, inclusive of interest.
- e) It is stated that the Applicant filed CP IB 187 of 2023 before this Tribunal. However, vide order dated 22.12.2023 the same came to be dismissed as it did not contain declaration under Section 94(4), with liberty to file fresh application.

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. 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 23.01.2024.
7. 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.
8. Even after the exclusion of the 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.
9. 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.”

10. 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.
11. However, 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.
12. Therefore, the present petition i.e. **Company Petition (IB) No. 77 of 2024** is dismissed being hopelessly barred by limitation.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

Vinit Patel/Steno

CP(IB) No. 77 of 2024

Mahesh Amarsinh Vara Vs Canara Bank

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)