

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

ITEM No.305
CP(IB)/89(AHM)2024

Order under Section 94 IBC

IN THE MATTER OF:

Kiritkumar Bhupatlal Sejpal

.....Applicant

Vs

Punjab National Bank erstwhile Oriental Bank of Commerce

.....Respondent

Order delivered on 28/02/2024

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)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, AHMEDABAD**

CP/IB/89/AHM/2024

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

*In the matter of **MR. Kiritkumar Bhupatlal Sejpal***

Mr. Kiritkumar Bhupatlal Sejpal

Residing at B-102, Decora West Hills,
Decora Road, Off Kalawad Road,
Near ISKCON Temple,
Rajkot-360005

... Applicant

Versus

Punjab National Bank

Erstwhile Oriental Bank of Commerce
Registered office at
MCB Branch,
Ground Floor, AUM Planet,
Opp. Nirmala Convent School,
Rajkot-360007

...Respondent

Order pronounced on : 28.02.2024

CORAM:

Mr. SHAMMI KHAN, MEMBER (JUDICIAL)

Mr. SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For the Applicant : Ms. Neeta Pandit, Advocate

For the Respondent : Ms. Hirva Dave for Jaimin Dave Adv

ORDER

1. This application has been filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 by the Applicant/Personal Guarantor to initiate proceeding in terms of Section 94 (1) of the IBC, 2016.
2. The Corporate Debtor namely, M/s. Bajrang Cotgin Pvt. Ltd. was admitted into Corporate Insolvency Resolution Process vide order dated 15.03.2021.
3. The present application is filed by Mr. Kiritkumar Bhupatlal Sejpai who is stated to be a guarantor to the Corporate Debtor named above which is under Liquidation. The liquidation order of Corporate Debtor was passed on 04.07.2022.
4. On perusal of the notice issued by erstwhile Oriental Bank of Commerce under section 13(2) of SARFAESI Act, 2002 dated 02.08.2018 and possession notice dated 24.10.2018 annexed with the application. It is observed that said notices are issued only for the

purpose of enforcing security interest and not to invoke personal guarantee.

5. The Applicant has attached a copy of application filed by Oriental Bank of Commerce under section 19 of the Recovery of Debts and Bankruptcy Insolvency Resolution and Bankruptcy of Individuals and Partnership Firms Act, 1993 against Principal Borrower and other Guarantors bearing O.A. No. 1240 of 2019. However, mere filing of such application for recovery against Principal Borrower and other Guarantors under section 19 of RDB Act does not amount to invocation of guarantee as the same is pending adjudication of debt and liability against the Applicant and till date no recovery certificate is issued by Debt Recovery Tribunal, Ahmedabad.

6. 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.”*

7. In the present case no document is annexed with the application which suggests that guarantee is invoked by the Respondent Bank. 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/89/AHM/2024** stands dismissed.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

Arati-LRA