

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD

COURT - 2

ITEM No.301

CP(IB)/60(AHM)2022

Order under Section 94 IBC

IN THE MATTER OF:

Sanjay D Kanani Through RP of Rahul N Shah

.....Applicant

V/s

Kotak Mahindra Bank

.....Respondent

Order delivered on: 18/04/2024

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.

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

-sd-

**CHITRA HANKARE
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

CP(IB) No. 60 / NCLT / AHM / 2022

[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:

Mr. Sanjay D Kanani

Through Resolution Professional

Mr. Rahul N Shah

...Applicant

Versus

Kotak Mahindra Bank

...Respondent

Order pronounced on 18.04.2024

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

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

MEMO OF PARTIES

Mr. Sanjaybhai D Kanani

Through Resolution Professional

Mr. Rahul N Shah

Having address at:

20, Sudarshan Soc, Part-2,

Near Naranpura Bus - stop,

Naranpura,

Ahmedabad,

Gujarat – 380013.

...Applicant

Versus

KOTAK MAHINDRA BANK

Having office at

3rd floor, Kotak house,

K.G. Point, Ghod Dod Road,

Near Ganga Palace,

Surat, Gujarat.

...Respondents

Present:

For the Applicant : Mr. Sumit Parikh, Adv.

For the RP : Mr. Rahul Shah, CA

Personal Guarantor : Mr. Sanjay Kanani (party in person)

For the Kotak

Mahindra Bank : Mr. Kunal Vaishnav, Adv.

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. Rutika Creations Pvt. Ltd. has executed personal load cum guarantee agreement of Rs.35,00,000/- (Rupees Thirty-Five Lacs Only) with Kotak Mahindra Bank. The applicant stood as a guarantor to this agreement. The date of default of payment is 31.03.2018. Kotak Mahindra Bank has issued recall notice to guarantor on 07.02.2018 and demand notice on 07.03.2018.
3. On presentation of the application by the Applicant/ Personal Guarantor, this Authority vide order dated 26.07.2022 has appointed the Resolution Professional viz., Mr. Shah Rahul Nareshbhai, having Registration No. IBBI/IPA-001/IP-P-02170/2020-2021/13367 & directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed by him on 08.12.2023 recommending the

admission of the application filed under section 94 of IBC, 2016.

4. Respondent in his reply submitted that the Petitioner has not produced and has suppressed from this Tribunal regarding the cases filed by the Respondent under Negotiable Instrument Act which is annexed as Annexure A. Respondent further submitted that the Petitioner has filed the present application to avoid the Civil and Criminal Liability and Return of Cheques issued in the capacity as the Director of Rutika Creations Pvt. Ltd.
5. We have heard the learned Counsel for both the parties and perused the documents on record. We have also gone through the report dated 08.12.2023 filed by the RP.
6. The Demand Notice dated 07.03.2018, which is the basis of the default as claimed by the Appellant has been filed along with Application. The notice is addressed to Rutika Creation Pvt. Ltd, the Corporate Debtor and Kiran Sanjaybhai Kanani, the other guarantor but not to the applicant. Therefore, in our considered view the guarantee was not invoked by the Kotak Mahindra Bank *vide* demand notice dated 07.03.2018 against this

applicant. Apart from this document, the applicant has not produced or placed any other document to show that guarantee was invoked against the applicant for the recovery of the amount.

7. In view of the above observations, this application is dismissed for filing an application being a co borrower cum guarantor in which there are certain details not revealed or attached. This application is appears to be filed to escape from the action initiated by financial creditor. Since he appears to have signed the loan as director cum guarantor, the personal insolvency on the grounds of this default cannot be filed under Sec 94 of IBC. Further the loan agreement clause 11.6 restricts default only to arbitration.
8. Under such circumstances, we do not agree with the report submitted by the RP that the present application is maintainable as the guarantee has not been invoked in respect of the applicant. The report of the RP is found to be not satisfactory in examining the eligibility of the borrower to file under Sec 94 of IBC. In sequel to the above, we are of the

considered view that the present application is not maintainable.

9. Hence, we pass the following order:

ORDER

The CP(IB) 60 of 2022 is rejected.

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

**CHITRA HANKARE
MEMBER (JUDICIAL)**

Puneet Shukla