

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 2**

ITEM No.304  
CP(IB)/28(AHM)2022

**Order under Section 95(1) r.w 60(2) IBC**

**IN THE MATTER OF:**

Mr Anil Ratilal Patel Proprietor of Alteem Industries .....Applicant  
V/s

Mr Sachin Kumar Devendrakumar Panchal Personal guarantor .....Respondent  
of S K Engimech Pvt Ltd

**Order delivered on 22/12/2023**

**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 order. The order is pronounced in open Court, vide separate sheet.

-SD-

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

-SD-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

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

**CP(IB) No. 28 / NCLT / AHM / 2022**

(Filed under Section 95 of the Insolvency & Bankruptcy Code, 2016)

Anil Ratilal Patel  
Proprietor of Alteem Instruments  
Opp. Ganesh Meridian-A, Plot No. 272/3,  
Alteem Instruments, Chanakyapuri Road,  
Nr. New Gujarat High Court, S.G Highway,  
Ahmedabad-380060

... Operational Creditor

Versus

Mr. Sachin Devendrakumar Panchal  
Personal Guarantor of S K Engimech Pvt. Ltd.  
1 Raj Avenue, Opp. Raj Tilak Plaza,  
Nr. Government Tubewell, Bopal,  
Ahmedabad-380058

... Personal Guarantor

Order pronounced on 22.12.2023

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

**DR. V. G. VENKATA CHALAPATHY**  
**HON'BLE MEMBER (TECHNICAL)**

**Present:**

For the Applicant : Ms. Shakshi Jain, Adv.  
For the RP : Subham Agarwal, RP in person

**Per: Dr. VELAMUR G VENKATA CHALAPATHY**

**JUDGEMENT**

1. The applicant, namely Mr. Anil Ratilal Patel Proprietor of Alteem Instruments has filed an Application under Section 95 of the IBC r/w Section 96,97, 99 and 100 of the IBC Code r/w rule 6 of IBC (Application to Adjudicating Authority For Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019. This Tribunal has vide its order dated 31<sup>st</sup> March, 2022 appointed Mr. Subham Agarwal Goyal bearing Registration No. IBBI/IPA-002/IP-N01000/2020-2021/13229 as the Resolution Professional. The RP has filed his report on 02.05.2022 under Sec 99 of the IBC 2016.
2. The amount of Debt of the Corporate Debtor has been submitted as Rs.31,10,915/- and the date of default is as on 01.03.2021. Guarantor agreed for payment of outstanding invoice amount to the applicant as per the settlement agreement, being one of the Director of the CD. On 01.03.2021 the settlement deed executed between the Operational Creditor namely Mr. Anil Ratilal Patel Proprietor of Alteem Instruments and Personal Guarantor Mr. Sachin Devendrakumar Panchal. The applicant had issued a Demand Notice in For B under Rule 7(1) of IB Rules 2016 to the Personal Guarantor on 30.10.2021.
3. In compliance with the provisions of Section 99(1) read with Section 95 of the Code, the RP filed report recommending the admission of the application filed by the creditor under section 95 of the Code

seeking commencement of Insolvency Resolution Process against the personal guarantor, namely Mr. Sachin Devendrakumar Panchal. The Grounds for the admission of the application in the report are as follows:

- i. Operational Creditor Mr. Ratilal Patel, Proprietor of “Alteem Instruments” had supplied the parts of control panel to S K Engimech Private Limited, Corporate debtor and against the same raised the invoice amounting Rs. 11,52,575/-.
- ii. Despite of issues of several reminders, CD has not paid the due amount to Petitioner, hence Operational Creditor issued demand notice under section 8 of IBC in form-3 along with Form-4 on 12.01.2021 to the S K Engimech Private Limited.
- iii. On receipt of such notice, CD approached to the petitioner for settlements of debts and Settlement Deed was executed between Alteem Instruments, Proprietorship concern of Mr. Anil Ratilal Patel and S K Engimech Private Limited on 01.03.2021.
- iv. As per Clause C of the Deed of Settlement deed executed as on 01.03.2021, Petitioner, Alteem Instruments, Proprietorship concern of Mr. Anil Ratilal Patel, agreed to accept Rs. 8,52,575/- (Rupees Eight Lakh Fifty-Two Thousand Five Hundred Seventy-Five Only) from M/s SK Engimech Private Limited towards full and final settlement of entire dues of Petitioner. However, this Settlement is subject to payment of all the Post-dated cheques issued by M/s S K Engimech Private Limited on their respective due

dates and in time and without delay or default. As per Clause D of the Deed of Settlement, Petitioner agreed to waive the amount of Rs. 3,39,088/- (Three lakh thirty-nine thousand eighty-eight only) from interest as claimed in the Demand Notice.

- v. *The Clause 12 of the Deed of Settlement provides that "Mr. Sachin Devendrakumar Panchal the Director/Authorized representative of SK Engimech Private Limited hereby takes personal guarantee to honour the above said installments on their respective due dates and in case of default in the payment of the above said installments or for any reason Corporate Debtor goes into CIRP or into a situation where it is not capable to honor the above said installments or defaults the payment of above agreed installments on their respective due dates, then Mr. Sachin Devendrakumar Panchal shall be personally liable as guarantor to make the payment for the above amount and honor the payment as per above schedule in his personal capacity."*
- vi. The CD issued cheques to make the payments of the amount of debt as decided in settlement deed. The said chques issued in favour of applicant was dishonored.
- vii. As per the Settlement Deed, Mr. Sachin Devendrakumar Panchal, one of the director of Corporate Debtor stood as Personal Guarantor and ensured the payment to Operational Creditor and also agreed as mentioned in Point No. 9 of Settlement Deed that: *in case of default or delay in the clearance of any cheque issued under this settlement deed, then the Petitioner shall have a right to*

*reclaim the interest @ 18% per annum, along with penalty of Rs. 5000/- per day per cheque for such number of days of default and including what is waived under this settlement deed, from the date of default, i.e. from the due dates to invoices up to Actual date of payment. In addition to this in the event of such default then petitioner have the right to claim for legal expenses and professional legal fees which petitioner may have incurred for such proceeding."*

- viii. Based on above facts and available document as mentioned in the Report and perusal of records, calculations and response of Guarantor, Resolution Professional recommended the acceptance of the application as filed by petitioner Operational Creditor.

### **ORDER**

The respondent has never appeared or filed any reply in the matter but has received a copy of the RPs report.

- i) Resolution Professional is observed to have come to the conclusion for recommending the application without proper verification of the debt, its eligibility, nature of settlement agreement and whether it can be preferred before this Tribunal under IBC 2016.
- ii) The stated default is on account of a settlement agreement dated 1<sup>st</sup> March 2021, that was made between the applicant and respondent and it does not involve any debt to which he was a party at the time of disbursement to the Corporate Debtor. This is an agreement brought in by way of a settlement if the amount agreed is not paid

and is not a guarantee for the default towards supply of goods (by the applicant who was an operational creditor) which was remaining unpaid as per due date of invoices. It is further stated that the settlement was agreed by mutual consent towards dues to be paid which was agreed between the applicant and the respondent No. 1 (sole proprietor) who is a Director of the Corporate Debtor.

- iii) In this regard certain case laws are very clear to define what is a settlement agreement and is a guarantee. Settlement agreement is done to avoid any litigation and the process of its realization not having been met is not a default on a debt guaranteed at the time of grant of the loan or its due date of payment and is a separate and independent agreement which is not to be decided by this tribunal and is not an invocation of a guarantee granted at the time of release of loan or due of an invoice. The only process of recourse for such default is under the relevant provisions of IBC 2016 available to operational creditor.
- iv) NCLT in CP IB 45/KOB/2022 in the matter of M/s Zhejiang Industrial Group Co ltd vs M/s Al Badr Seafoods Pvt Ltd has observed by a detailed order the maintainability of such applications.
- v) Whether a decree or an arbitral award or a settlement deed can form the basis of a financial or operational debt under IB code has to be examined in the matter. Rulings in Dena Bank v/s C Shivakumkar Reddy and G Shivramakrishna V Isgec Covema Ltd provide guidance in the matter. Also Amrit Kumar Agarwal V/s

Tempo Appliances P Ltd is seen as further reference wherein the matter has been examined and such settlement agreements cannot be considered as debt due to be paid on default or invocation of guarantee.

Accordingly, CP(IB) 28 of 2022 rejected and disposed off.

-SD-

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

-SD-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

Kajal LRA