



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

ON THE 3rd OF MARCH, 2025

WRIT PETITION No. 7687 of 2025

RAMESH KOTHARI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Amit Agrawal - Senior Advocate alongwith Shri Utkarsh Joshi - Advocate for the petitioner.

Shri Bhuwan Gautam - Govt. Advocate for the respondent / State.

ORDER

Per: Justice Vivek Rusia

Petitioner has filed the present petition seeking direction to the respondents to consider the representation regarding the pending petition under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “IBC, 2016”) before the National Company Law Tribunal, Indore (hereinafter referred as “NCLT”).

02. The petitioner is an owner of the property situated at House No.437-B, Katju Nagar, Ratlam, M.P. The aforesaid property was mortgaged as a collateral security against the financial facility availed by M/s Rainbow Sales and M/s Kothari Enterprises from respondents No.4 & 5.

03. The M/s Rainbow Sales and M/s Kothari Enterprises are sole



proprietorship firm owned by Chetan Kothari and Angoorbala Kothari respectively. They availed the financial facilities from the Axis Bank in the form of SBB overdraft facility of Rs.23,00,000/- and Rs. 49,10,680/- respectively. The Axis Bank classified the account as Non-Performing Asset on 30.08.2023 and thereafter, initiated the recovery proceedings under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as “SARFAESI Act”). The Axis Bank approached the Sub Divisional Magistrate in order to seek the assistance to secure the possession of the mortgaged property of the petitioner. Vide order dated 28.06.2024, the Additional Collector passed an order for taking possession with the help of Tehsildar. In compliance of the aforesaid order, the Tehsildar Ratlam issued a notice to the borrower as well as Chetan Kothari and Ramesh Kothari i.e. petitioner for taking possession on 27.02.2025.

04. Before the said date, the petitioner approached the NCLT, Indore by way of petition under Section 94 of IBC, 2016. Now, in order to protect the possession of the secured asset, the petitioner has approached this Court by way of this petition seeking direction to the respondents to stop the recovery of possession during the pendency of the insolvency proceedings before the DRT.

05. Shri Amit Agrawal, learned senior counsel appearing for the petitioner submits that by virtue of Section 96(1)(b)(i) of IBC, 2016 after filing an application under Section 94 of IBC, 2016 an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application and during the interim-moratorium period any legal action or proceeding pending in respect of any debt shall be deemed to



have been stayed. The creditors of the debt shall not initiate any legal action or proceeding in respect of the debt.

06. Shri Agrawal, learned senior counsel further submits that the definition of debtor under Section 3(8) of IBC, 2016 does not explicitly define the term debtor as applicable to the individual or sole partnership firm, but by way of statutory interpretations, the definition of debtor under other law the individual and partnership firm or sole proprietorship firm can be included in it hence, the present petitioner who is a personal guarantor to sole proprietorship firm is hereby covered under the broader scope of term debtor.

Heard.

07. We are unable to accept the aforesaid submission. Section 94 of IBC, 2016 gives remedy to ‘debtor’ only to either apply personally or through a resolution professional (RP) to the Adjudicating Authority for initiating the insolvency resolution process. Section 3(8) of IBC, 2016 defines “corporate debtor” which means a corporate person who owes a debt to any person and “corporate person” is defined in sub-section (7) of Section 3, it means a company under the Companies Act, 2013, a limited liability partnership under the Limited Liability Partnership Act, 2008 or any other person incorporated with limited liability under any law. Therefore, in this definition the proprietorship firm is not included. The M/s Rainbow Sales and M/s Kothari Enterprises are sole partnership firms, thus, in respect of these two firms, no application under Section 94 is liable to be entertained even at the instance of the present petitioner.

08. Even otherwise, now stage of consideration of the representation is over. The Additional District Magistrate has already passed an order hence, become a *functus officio*. The Tehsildar who has



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issued a notice does not enjoy any adjudication power to consider the objection / representation of the petitioner.

09. In view of the above, this Writ Petition is totally misconceived and hereby **dismissed**.

(VIVEK RUSIA)
JUDGE

(PREM NARAYAN SINGH)
JUDGE

Divyansh