



NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. IVN.P/58/2024 C.P. (IB)/410(MB)2024

IN THE MATTER OF

Kapil Subhash Anand

U/s 94(1) of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 01.09.2025

CORAM:

SH. MOHAN PRASAD TIWARI
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner:

Adv. Malcolm (PH)

For the Respondent:

ORDER

IVN.P/58/2024: The above Intervention Petition is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

C.P. (IB)/410(MB)2024: List for further consideration on **08.09.2025**.

sd/-

CHARANJEET SINGH GULATI
Member (Technical)
//Arjun//

sd/-

MOHAN PRASAD TIWARI
Member (Judicial)



**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V**

IVN.P/58/2024

IN

C.P. NO. 410(IB)/MB/2024

Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.

KOTAK MAHINDRA BANK LIMITED

A banking company within the meaning of
Section 5(c) of the Banking Regulation Act,
1949 (10 of 1949) and having its Registered
Office at 27 BKC, C 27, G BLOCK, BANDRA
KURLA COMPLEX, BANDRA, (E), MUMBAI —
400051 and Branch office at Kotak, Infiniti, 5th
Floor, Zone-IV, Building No. 21, Infinity, IT Park,
General A. K. Vaidya Marg, Malad (E),
Mumbai —400 097

Through its **Authorized Signatory**

Ms. Samhita Vinod

....Applicant

IN THE MATTER OF:

Mr. Kapil Subhash Anand

**....Petitioner/Personal
Guarantor**



Order Pronounced on: 01-09-2025

Coram:

Hon'ble Sh. Mohan Prasad Tiwari, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati, Member (Technical)

Appearances:

For Personal Guarantor : Adv. Rita Yadav (VC)

For Kotak Mahindra Bank: Adv. Nirman Sharma, Adv. Deeshank Doshi,
Adv. Nishant Rana (VC)

ORDER

IVN.P/58/2024

1. The present Intervention application, is filed by Kotak Mahindra Bank Ltd (**"Applicant/ Financial Creditor"**) through its **Authorized Representative Ms. Samhita Vinod** under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**"Code/IBC"**), under **C.P. NO. 410(IB)/MB/2024**, seeking the following reliefs:-

- a. *Pending the final hearing and disposal of the Petition, this Hon'ble Court be pleased to pass an order to make the Applicant the necessary and relevant party to the Petition;*
- b. *Pending the final hearing and disposal of the Petition, this Hon'ble Court be pleased to allow the Applicant to file on record its claim and/or pleadings along with documents as shall be necessary for the Applicant to defend its interest in the matter before this Hon'ble Court;*
- c. *Pending the final hearing and disposal of the Petition, this Hon'ble Court be pleased to direct the Personal Guarantor to provide the Applicant with the copies of the Petition filed to initiate the Personal Insolvency Proceedings;*
- d. *Pending the final hearing and disposal of the Petition, this Hon'ble Court be pleased to pass an order to vacate the interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 or stay the proceedings till such further orders;*



- e. This Hon'ble Tribunal be pleased to hear the Petition expeditiously in terms of strict timeline as contained in Section 95,96,97,98,99 and 100 of Insolvency and Bankruptcy Code, 2016;*
- f. The Costs of this Application be provided for;*
- g. Any other and further reliefs as may be deemed fit and proper in the circumstances of the above case, be granted;*

Brief facts as per the Application:

2. The Applicant has filed the above Intervention application (**IA**) in C.P. NO. 410(IB)/MB/2024. This company petition was filed by Mr. Kapil Subhash Anand (**"Petitioner/Personal Guarantor"**) under section 94(1) of IBC for Initiation of Personal Insolvency Resolution Process.
3. The Applicant sanctioned Working Capital Limits in favour of KCN Exports Limited (**"The Principal Borrower/ Corporate Debtor"**). The said facilities were secured by personal guarantees and mortgages created by the directors/guarantors, namely Mr. Chetan Anand, Mr. Nikhil Subhash Anand, the Personal Guarantor herein, and the deceased late Ms. Neelam Anand. The asset secured against the sanctioned loan is *Flat No. 401, admeasuring 2350 sq.ft. built-up area and 1071 sq.ft. terrace area, on the 4th Floor of the building "Sonal", Plot No. 279, Sher-E-Punjab Cooperative Housing Society Ltd., Mahakali Road, Andheri (East), Mumbai – 400093, bearing Survey No. 29 to 38 and 43, Sub-District Bandra* (**"The Secured Asset"**). Later on, the loan account of the principal borrower was classified as a Non-Performing Asset (NPA) on 31st December, 2021.
4. Further, the Applicant issued a demand notice under Section 13(2) of the SARFAESI Act, 2002 on 21st April, 2022, calling upon the borrower and guarantors to discharge the outstanding dues of Rs. 5,47,70,490.77 (Rupees Five Crore Forty Seven Lakhs Seventy Thousand Four Hundred Ninety and Paise Seventy Seven Only) as on 31st March 2022. A corrigendum to the said demand notice was issued on 26th April 2022.



5. The Applicant obtained an order dated 12th April 2024 under Section 14 of the SARFAESI Act, 2002 from the Learned Chief Metropolitan Magistrate, Esplanade, Mumbai, for taking possession of the secured assets. Pursuant to the said order, the Applicant through its Advocate Commissioner issued a pre-possession notice dated 24th May, 2024, fixing the programme of taking physical possession of the said secured asset, on 12th June, 2024.
6. On 30th May, 2024, the Personal guarantor filed an application bearing CP no.410(IB)/MB/2024 under Section 94 of the Insolvency and Bankruptcy Code, 2016 (**"the Petition"**), seeking initiation of insolvency resolution process against himself.
7. Thereafter, the Applicant derived knowledge of this petition through the Securitisation Application No. 188 of 2024, filed by the principal borrower before the Debt Recovery Tribunal, in which the Personal Guarantor is impleaded as a guarantor.

Submissions of the Applicant :

8. The Applicant has submitted that just after 6 days from the date of issuance of the said pre-possession notice, the Personal Guarantor has deliberately in a unscrupulous and surreptitious manner has filed the present proceedings under the Insolvency and Bankruptcy Code, 2016 to thwart, cause hindrance to the enforcement measures of the Applicant under the SARFAESI ACT, 2002. The timing of the present proceedings shows that the Personal Guarantor, aware of the pre-deposit requirement and lack of merits before the DRT under SARFAESI, deliberately approached this Tribunal. By invoking Section 94, he seeks to misuse the interim moratorium under Section 96 by prolonging proceedings through adjournments or non-representation, with the mala fide intent of obstructing recovery under SARFAESI.



9. It was submitted that the Personal Guarantor has suppressed a material fact, namely the Will dated 21.08.2021 left by his deceased mother, Late Ms. Neelam Anand, on which probate was granted by the Hon'ble Bombay High Court on 26.09.2023. Non-disclosure of this fact has a direct bearing on the maintainability of the petition, as it establishes the solvency of the Personal Guarantor.
10. It was further submitted that only the Personal Guarantor, and not his brother, Mr. Nikhil Subhash Anand, has initiated insolvency proceedings. The Personal Guarantor, despite inheriting substantial assets under the probated Will and having adequate means to repay the Applicant's dues, has misrepresented his financial condition, including falsely declaring possession of merely ₹15,000/- in cash. Such misrepresentation evidences that he is not insolvent but has approached this Tribunal with unclean hands.
11. The Applicant has stated that the Personal Guarantor and the other guarantors are a chronic defaulter and owe huge sums of money of Rs.8,87,60,706.89/— (Rupees Eight Crore Eighty Seven Lakhs Sixty Thousand Seven Hundred Six and Paise Eighty Nine Only) as on 01.08.2024 to the Applicant. On several previous occasions the Personal Guarantor and the allied guarantors/borrowers have failed to make the repayment to the Applicant on multiple occasions. The Personal Guarantor and other allied guarantors use forged, fabricated documents to initiate false proceedings against the Applicant, as this present petition is initiated under IBC for wrongful purpose and to enjoy the protection.
12. The Applicant has submitted that a judgement or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. This principle has been applied by Courts to protect the statutory framework of SARFAESI and reprimand instances of the abuse of process at the hands of debtors or defaulters. The Applicant has relied upon the following judgement- *Mohan Suganchand Agarwal v. Bank of Baroda & Ors-2016*. The



Applicant stated that this principle must extend to fraudulent invocation of moratorium, when the same is product of invoking a self serving protection which was enacted only for genuine parties seeking resolution of their debts.

13. It is submitted that while the Applicant Bank has issued a demand notice under Section 13(2) of the SARFAESI Act for monetary defaults, safeguards must be preserved. Allowing actions under Sections 13(2) or 14 to be defeated would nullify the legislative intent of protecting secured creditors. The interim moratorium under the IBC cannot be misused by defaulters to file Section 94 petitions merely to obstruct recovery proceedings.
14. It was further submitted by the Applicant that even after 14 months of filing the section 94 petition, till date the Personal Guarantor has taken no steps to even get a Resolution Professional appointed. This demonstrates that the Personal Guarantor is not at all inclined in pursuing the proceedings to its logical conclusion. The Applicant has referred to the below given para no. 11 of the Judgement- ***Suprio Ghosh v. Bank of Maharashtra- 2025 SCC Online NCLAT 991***

“.....

11. In the above background we find that for finalizing a repayment plan it is important that the legal proceedings are pursued diligently and in vigilant manner. The Appellant has been very casual in his approach. Appellant has been absent for last three hearings which shows that the Applicant was not interested in pursuing the matter further. And was trying to abuse the process of law by misusing the moratorium available to him under Section 96 of the Code. Furthermore, no satisfactory explanation has been provided by the Appellant for his non-appearance in the restoration application. The plea of the Appellant regarding internet connectivity is not tenable as the counsel for the Appellant was appearing before other courts through VC but his explanations for non-appearance before the Adjudicating authority through VC on 08.07.2024 is inexplicable. We are satisfied that the Appellant does not deserve any protection and restoration application needs to be dismissed for reasons as discussed herein.”



15. The Personal Guarantor's contention that a Section 94 application must be admitted under Section 100 without objection is untenable. Reliance on Dilip Jiwrajka is misplaced, as that case addressed the constitutional validity of Sections 94–95, not their misuse against SARFAESI proceedings. The judgment does not sanction defeating SARFAESI through Section 94. This Tribunal is not bound to mechanically appoint a Resolution Professional where the process is abused, and retains inherent powers to prevent misuse of interim moratorium and safeguard secured creditors.

Submissions of the Personal Guarantor/ Personal Guarantor :

16. The Personal Guarantor submitted that he holds 5% shares and that he being a Director of KCN Exports Ltd. (the Corporate Debtor), had executed guarantees along with other Directors for loans of ₹13.50 Cr availed by the Corporate Debtor.
17. Owing to adverse business conditions and the impact of Covid-19, the Corporate Debtor defaulted, and its account was classified as NPA on 31.12.2021, as per demand notice dated 21.04.2022 issued under Section 13(2) of SARFAESI. The Personal Guarantor, having executed a Deed of Guarantee in favour of Kotak Mahindra Bank, has filed the present petition under Section 94 for initiation of insolvency proceedings against himself.
18. The Personal Guarantor has contended that as per the ***Dilip Jiwrajka v. Union of India (2023)***, once an application u/s 94 is made, the Hon'ble Tribunal is bound to assess the matter u/s 100 only after the RP submits a report on the same.

**Analysis and Findings:**

19. We have heard the Ld. Counsels of the parties and perused the documents available on record.

20. For better appreciation of the facts of the case it is necessary to understand the Chronological order of the events of the case. The below given table summarizes the sequence of events, as follows:-

Date	Particulars
31.12.2021	The Principal Borrower was declared as NPA by the Applicant Bank.
31.03.2022	The Applicant initiated recovery and securitisation proceedings under the SARFAESI Act, 2002 against the Principal Borrower and the Personal Guarantors.
21.04.2022	The Applicant Bank issued Demand Notice u/s 13(2) of SARFAESI Act 2002, to the Principal Borrower and Personal Guarantor for enforcing its security in respect of the debt.
12.04.2024	The Ld. Metropolitan Magistrate passed an order u/s 14 of the SARFAESI Act, allowing the Applicant Bank to take possession of the said property (secured asset).
24.05.2024	The Court Commissioner appointed as per the order u/s 14 of SARFAESI Act issued a pre- possession notice to the Personal Guarantors informing them of the order passed by the Ld. Metropolitan Magistrate.
30.05.2024	The Personal Guarantor filed the application u/s 94 of IBC
05.08.2024	The Intervention Application u/s 60 was filed by the Applicant.

21. An application under Section 94 of the IBC enables a debtor in default to initiate insolvency resolution and place a repayment plan before the



Adjudicating Authority, providing a structured mechanism to resolve liabilities instead of facing creditor enforcement.

22. From the above sequence of events, it is evident that there is a considerable gap of more than two years between the issuance of the demand notice dated 21.04.2022 under Section 13(2) of the SARFAESI Act and the issuance of pre-possession notice dated 24.05.2024 passed u/s 14 of SARFAESI Act.
23. The Personal Guarantor neither pursued legal remedies nor attempted repayment in the two years after the demand notice dated 21.04.2022. It was only upon receipt of the pre-possession notice on 24.05.2024 that he rushed to file the Section 94 petition on 30.05.2024. This belated filing shows the petition is not a bona fide attempt at resolution but an attempt to misuse the interim moratorium under Section 96 to stall SARFAESI proceedings and shield the secured asset.
24. Even after filing the petition under Section 94 of the IBC, the Personal Guarantor repeatedly sought adjournments and failed to comply with the directions of this Tribunal. Such conduct clearly reflects his lack of diligence and seriousness in prosecuting the petition.
25. It is further noted that the petition was filed only when SARFAESI proceedings had advanced to the stage of possession of the secured asset. The timing of the filing, coupled with the Petitioner's conduct, prima facie establishes that the application under Section 94 has been filed not with a bona fide intention of resolution, but solely to obstruct and frustrate the SARFAESI proceedings initiated by the Applicant Bank.
26. Reliance is placed on **Bank of Baroda vs. Union of India (2024)**, wherein the Hon'ble Bombay High Court observed misuse of the interim moratorium under Sections 94-95 by Personal Guarantors who failed to comply with Registry objections or prosecute applications diligently, and accordingly mandated strict timelines under the NCLT Rules to prevent frustration of



the statutory scheme pertaining to personal guarantors and make sure it does not get defeated by an unduly prolonged interim moratorium.

27. A reference is also being made to the judgement of Hon'ble NCLT, Chandigarh, in the case of **Gagan Deep Kaur (2024)**, wherein the tribunal held that :

"...We cannot also be oblivious to the fact that (a) SARFAESI proceedings against the Applicant/Guarantor are pending; (b) the earlier Application No. 91/Chd/HP/2021 was filed by the Applicant on 01.10.2020 and he did not bother to complete the application in all respect, which proves the contention of the Caveator/Respondent that the sole objective of filing that Application was to mis-utilize the interim moratorium, which gets triggered on the very date of filing of a section 94 application, in order to delay the action under SARFAESI Act."

28. In light of the judgment of the Hon'ble Supreme Court in **Dilip Jiwarajka v. Union of India (2023)**, prayer clauses (a) to (d) are not maintainable and are accordingly dismissed.

29. However, in view of the facts of the case and foregoing discussion, the prayer clause (e), is partially allowed. The Registry is directed to list the main petition, being **C.P. No. 410(IB)/MB/2024**, on priority for hearing within ten days from the date of this order for consideration.

30. Accordingly, this IA is partly **allowed** and is **disposed off**.

Sd/-
Charanjeet Singh Gulati
Member (Technical)

(Rashmi, LRA)

Sd/-
Mohan Prasad Tiwari
Member (Judicial)