

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1



ITEM No.301 & 302
C.P.(IB)/166(AHM)2024
With
IA/1667(AHM)2024

Order under Section 94 IBC

IN THE MATTER OF:

Saurabh Bharatbhushan Jain
V/s
State Bank Of India & Others

.....Applicant

.....Respondent

Order delivered on: 27/01/2025

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

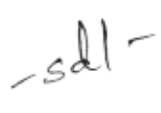
ORDER

(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.



SAMEER KAKAR
MEMBER (TECHNICAL)



SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

CP/IB/166/NCLT/AHM/2024

With

I.A. No. 1667 of 2024

(Filed under Section 94 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the IB (AAA for IRP for PGCD) Rules, 2019)

CP/IB/166/NCLT/AHM/2024

Mr. Saurabh Bharatbhushan Jain

Having address at:

23, Vasundhara Society,

Behind Big

Bazar, Vesu,

Surat – 395 007

E: sidharrtha@gmail.com

... Personal Guarantor

VERSUS

1. State Bank of India

Stressed Assets Management Branch,

2nd Floor, Paramsiddhi Complex,

Opp. V.S. Hospital, Near Ellisbridge,

Ahmedabad – 380 06

E: team2samb.ahm@sbi.co.in

2. Nutan Nagril Sahakari Bank Limited

Head Office at Opp. Samarsheshar Mahadev

Law Garden, Ahmedabad – 380006

And also

1004/05/06, Krishna Textile Market,

Umarwada Ring Road, Surat –



3. Jain Sons Finlease Limited

Having its registered officer at
1002, 10th Floor, A Block, The Platina,
Gachibowli, Hyderabad-500 032, Telagana.
And

Corporate officer situated at
12B, 3rd Floor, Techniplex-II IT Park,
Off. Veer Savarkar Flyover,
Goregaon (West), Mumbai-400062

4. Siemens Financial Services Pvt Ltd

Level 21, Birla Aurora Towers,
Dr. Annie Besant Road, Worli,
Mumbai – 400030

And also
Registered Office at
Plot No.2, Sector 2, Kharghar Node,
Navi Mumbai-410210

.... Respondents

I.A. No. 1667 of 2024

Mr. Sunil Kumar Agrawal

Resolution Professional of Saurabh Bharatbhushan Jain

IBBI/IPA-002/IP-N00081/2017-18/10222

Having address at:

B 1221, Sun West Bank

Near Shiv Cinema,

Ashram Road, Ahmedabad- 380009

E: anil91111@hotmail.com

... Applicant/IRP

VERSUS

1. Mr. Saurabh Bharatbhushan Jain

Having address at:

23, Vasundhara Society,

Behind Big

Bazar, Vesu,

Surat – 395 007

E: sidharrtha@gmail.com



2. State Bank of India

Having office at:

Stressed Assets Management Branch,
2nd Floor, Paramsiddhi Complex,
Opp. V.S. Hospital, Near Ellisbridge,
Ahmedabad – 380 06

E: team2samb.ahm@sbi.co.in

**3. Nutan Nagril Sahakari Bank Limited
Having address at:**

Head Office:

Nutan Nagrik Sahakari Bank Limited
opp. Samrtheswar Mahadev,
Law Garden, Ahmedabad-380006

Also At,

1004/05/06, Krishna Textile Market,
Umarwada Ring Road, Surat –

E: info@nutanbank.com

4. Siemens Financial Services Pvt Ltd

Having address at:

Birla Aurora Towers, Level 21,
Plot No. 1080, Dr. Annie Besant Road,
Worli, Mumbai - 400 030

E: janakiraman.iyer@siemens.com
janakiraman.iyer@siemens.com

5. Jain Sons Finlease Limited (Ashvfinance)

Having address at:

1002, 10th Floor, A Block,
The Platina, Gachibowli, Hyderabad-500032

Also at,

12B, 3rd Floor, Techniplex-II IT Park,
Off. Veer Savarkar Flyover,
Goregaon (West), Mumbai-400062

E: litigation@ashvfinance.com

priyanka.p@ashvfinance.com, viraj.h@ashvfinance.com

.... Respondents



Order pronounced on 27.01.2025

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For the Applicant : Mr. Nipun Singhvi, Advocate
: Mr. Mayur Jugtawat, Advocate
For the IRP : Mr. Sunil Kumar Agrawal,
(IRP in Person)
For the FC : Mr. Hitesh Buch, PCS
(Nutan Nagarik Bank)
For the PG : Mr. Mohit Gupta, Advocate

O R D E R
Per: Bench

1. The Present Application was filed on 24.04.2024 by the Applicant/Personal Guarantor under Section 94 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019.
2. The prayer made is to initiate the Insolvency Resolution Process (hereinafter referred as "IR Process") against the Applicant/Debtor who is the Personal Guarantor of the



Corporate Debtor namely Ms/. Sysco Industries Ltd and for an amount of Rs.7,91,347.385.28ps. in relation to the Credit Facility extended by the State Bank of India in favour of the Ms/. Sysco Industries Ltd and (hereinafter referred as the "Corporate Debtors").

3. On presentation of the application by the Applicant/Debtor, this Authority vide order dated 10.05.2024 appointed the Interim Resolution Professional viz., Mr. Sunil Kumar Agarwal, having registration number IBBI/IPA-001/IP-P01390/2017-2018/12178 & directed IRP to file report *within ten days* under Section 99 of Insolvency and Bankruptcy Code, 2016.
4. Hon'ble Tribunal passed the following relevant order which as under:-

"Heard, Learned Counsel for the Applicant/Personal Guarantor and perused the records. We hereby appoint Mr. Sunil Kumar Agarwal, having registration number IBBI/IPA-001/IP-P01390/2017-2018/12178 as IRP in respect of the Applicant/Personal Guarantor with direction to submit the report under Section 99 of the IBC Code, 2016 within ten days. Let copy of the



petition as well as this order be serve upon the concerned IRP for preparing the Report under Section 99 of IBC, 2016 by the Applicant/ Personal Guarantor. A perusal of the IBBI site reveals that the AFA of the said IRP is valid till 04.12.2024

The IRP is required to examine the Application as set out in Section 97(6) of IBC, 2016 and after examining the Application, as per Section 97(7) of the IBC, 2016 the IRP may recommend for the acceptance or rejection of the Application in his report, within a period of 10 days as contemplated under Section 99(1) of the IBC, 2016.

Let report by filed through separate IA in this matter by the IRP after serving the same on the Financial Creditor/Operational Creator as well as Corporate Debtor.

All challenges to the present application, if any, to be taken up at the time, when necessary, order under Section 100 of the IBC Code, 2016 is to be passed by this Tribunal.

Let copy of this order be served upon the IRP by the Applicant & Registry within three days.

Accordingly, C.P. (IB)/166(AHM) 2024 is ordered.”

5. Thereafter, the, Resolution Profession filed his Report dated 21.10.2024 through I.A. No.1667 of 2024, under Diary No. E-2858 only on **25.10.2024** recommending the admission



of the application filed under section 94 of IBC, 2016. The grounds for admission of the application recorded in the Report are as follows: -

- i. It is submitted that the Applicant herein was appointed by the Hon'ble Adjudicating Authority and Personal Guarantor and Registry of Hon'ble NCLT was directed to serve copy of application along with intimation with respect to appointment of Applicant as Interim Resolution Professional (hereinafter referred as "**IRP**"). However, it is pertinent to mention that the Applicant came to know about the appointment on 03.10.2024 and till date no communication with respect to appointment was received from anyone to the Applicant.
- ii. It is submitted that the Applicant came to knowledge of appointment as RP unofficially on 03.10.2024. Thereafter, the Applicant, being an officer of the court sent an email communication dated 04.10.2024 to Financial Creditors i.e. State Bank of India, Nutan Nagrik Sahakari Bank Limited, Siemens Financial Services Pvt. Ltd., Jain Sons Finlease Ltd. (Ashvfinance) to provide relevant details including the copy of Application with annexures in CP(IB)/166(AHM)2024. *Copy of email and letter dated 04.10.2024 by Applicant to Financial Creditor is annexed hereto and marked as **Annexure -B.***



- iii. It is further submitted that none of the Financial Creditors reverted to Applicant except Respondent no. 3 Nutan Nagrik Sahakari Bank Limited via email dated 10.10.2024 providing RP with some information/documents required for compliance of RP Report. *Copy of email communication dated 10.10.2024 by Nutan Nagrik Sahakari Bank Limited to RP is annexed hereto and marked as **Annexure-C**.*
- iv. That it is submitted that Personal Guarantor did not cooperate and did not provide the copy of application. There was no communication from the personal guarantor and therefore it is requested from this Hon'ble Tribunal to pass appropriate orders against the Personal Guarantor for non- cooperation.
- v. That since the copy of application was served upon corporate debtor, the RA who had taken over the Corporate Debtor provided copy of application to Applicant to form an opinion on the application under Section 94.
- vi. The present application is filed in compliance of order dated 10.05.2024 which came to knowledge of Applicant on 03.10.2024 unofficially.



6. The grounds for admission of the application recorded in the IRP Report are as follows: -

a) That the Application filed by the Guarantor satisfies the requirement as set out in Section 94 of the Code.

b) That the Corporate Debtor, M/s Sysco Industries Limited, has committed default in repayment of Loan Facility granted by the Creditor State Bank of India".

c) That Saurabh Bharatbhushan Jain, Personal Guarantor to M/s Sysco Industries Limited has also committed default in repayment of Loan Facility demanded by the Creditor 'State Bank of India".

d) The personal guarantee has been invoked by State Bank of India.

e) That Saurabh Bharatbhushan Jain, has not denied the existence of debt.

f) That, in light of the above, it is just and equitable that insolvency resolution process be initiated against Saurabh Bharatbhushan Jain, Personal Guarantors to M/s Sysco Industries Limited under the orders and directions of this Hon'ble Tribunal.

7. In pursuance to the report filed by the IRP, the Financial Creditor / Nutan Nagrik Sahkari Bank has filed its reply on



27.11.2024 opposing the acceptance of the IRP Report as well as opposing admission of the Personal Guarantor into Personal insolvency. The relevant paragraphs of the said reply are reproduced as under:-

1. *The Personal Guarantor has not come with clean hands having siphoned off the funds from corporate debtors by entering into transactions with related parties as is evident from the Order of this Hon'ble Tribunal referred to in paragraph 13 above.*
2. *The Personal Guarantor has defrauded the banks in respect of credit facilities / finance availed by Sysco India Private Limited where he and his immediate relatives are personal guarantors. The amount realized from sale of hypothecated stocks has not been deposited in the account.*
3. *The Personal Guarantor has been declared as a Wilful Defaulter by SBI and cannot seek any relief for his defaults.*
4. *The Bank has already reported to RBI under Fraud Reporting System as stated hereinbefore.*
5. *The Personal Guarantor has scant respect for this Hon'ble Tribunal having neglected responding to the mail communication of the IRP.*



6. *The CP(IB) 166(AHM)/2024 is filed in cavalier manner without any intention to submit concrete Repayment Plan.*
 7. *The Application of Personal Guarantor is an attempt to negate the action under SARFAESI as well as the Arbitral Award against Sysco India Private Limited and to stall the Execution Petition filed by the Bank and which is pending before the Court at Surat.*
 8. *This Hon'ble Tribunal may please consider the above contentions and objections of the Bank in interest of justice.*
- 8.** Further, another Financial Creditor / SBI has also filed its reply on 03.12.2024 supporting the report of the IRP as well as admission of the Personal Guarantor into Personal insolvency. The relevant reliefs of the said reply are reproduced as under:
- a. *Admit the application filed by the Resolution Professional under Section 99 of the Insolvency and Bankruptcy Code to initiate the Personal Insolvency Resolution Process (PIRP) against the Personal Guarantor as per the provisions of the Insolvency and Bankruptcy Code.*



b. *The Hon'ble Tribunal admit the application filed by the Personal Guarantor under Section 94 of the IBC. The Personal Insolvency Resolution Process (PIRP) be initiated against the Personal Guarantor in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.*

c. *Pass such other orders or directions as the Hon'ble Tribunal may deem fit and proper in the interest of justice.*

9. During the course of hearing on 08.11.2024 it was apprised by the Ld. Counsel for the IRP as well as the IRP that they came to know about the appointment as IRP in the present case only on 03.10.2024, though the neither the Applicant/Personal Guarantor nor the Registry informed the IRP about such appointment. In light of the same, following directions were made by this Tribunal on 08.11.2024, relevant extract of which is reproduced as below:-

*“Let notice be issued to the Personal Guarantor, Financial Creditors as well as the Corporate Debtor as well as to the **Ld. Counsel for the Personal Guarantor Mr. Mohit Gupta, specifically to explain that after obtaining***



the order of the Tribunal in C.P.(IB)/166(AHM)2024 what steps were taken for informing the IRP as well as in compliance of the order of this Tribunal and place on record the proof of the same.

The applicant is directed to collect the notices from the registry within three days and serve upon the Personal Guarantor, Financial Creditors as well as the Corporate Debtor along with copy of this order through Registered Ad post, Speed-post, Dasti mode as well as paper book on the registered email ID within seven days from the date of this order. The Personal Guarantor, Financial Creditors as well as the Corporate Debtor are directed to reply within a week from the date of receipt of notice. Rejoinder, if any, be filed thereafter before the next date.

Proof of Service be filed by way of an affidavit before the next date of hearing.”

- 10.** In the hearing dated 20.11.2024, the records were placed before this Tribunal which shows that the notice issued vide an order dated 08.11.2024, was duly served by the IRP upon the Financial Creditors and the Personal Guarantor.

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But only the Counsel of Personal Guarantor and Ld. PCS on behalf of one of the FC/Nutan Nagarik Sahakari Bank remained present in the hearing. In relation to the lapse on the part of the Personal Guarantor the following was noted by this Tribunal relevant extract of which is reproduced as below:-

1. *“Further, in compliance with the notice issued by this Tribunal to the Counsel for the personal guarantor, Mr. Mohit Gupta, Advocate, appears personally and admits the lapse on the part of the office of the Advocate as well as the personal guarantor for not communicating/serving the first order of this Tribunal dated 10.05.2024, to the IRP, which was appointed by this Tribunal.*
2. *However, Learned Counsel for the applicant / RP has drawn our attention to the address given by the personal guarantor in the petition as well as other relevant documents before the financial creditor, i.e., 23, Vasundra Society, Behind Big Bazar, Vesu, Surat.*
3. *Further, in the service report, the applicant / RP has specifically made a remarks that the address is under construction, and the personal guarantors, Mr. Saurabh Jain, as reverted only through email to*



the IRP on 15.11.2024. Further, the IRP who presents through virtual mode confirms that the personal guarantor is not residing at the given address as the property is under construction.

4. Let the personal guarantor remain physically present on the next date of hearing and explain as to why a wrong address was given in the petition and appraise the correct address to this Tribunal. The personal guarantor also to explain the lapse on oath as this Tribunal is not satisfied with the explanation given by the Ld. Counsel for the personal guarantor.”

11. On the next date of hearing i.e., 06.12.2024, it was recorded that the Financial Creditor/Nutan Nagrik Sahkari Bank has filed its reply on 27.11.2024 through e-mode objection to the report of the IRP. Further, the Financial Creditor/SBI has filed reply on 02.12.2024 through e-mode supporting the report of the IRP. But no rejoinder has been filed by the Applicant/IRP or the Personal Guarantor to their replies. In respect of giving wrong address, the Personal Guarantor has not filed an explanation affidavit and the following directions were passed by this Tribunal, relevant extract of which is reproduced as under:-



“In compliance of last order, though the personal guarantor is physically present in person. However, no explanation affidavit on oath has been filed as to why a wrong address was given in the petition as well as the lapse on the part of the personal guarantor for not communicating/serving the first order of this Tribunal dated 10.05.2024, to the IRP, which was appointed by this Tribunal.

The personal guarantor is again directed to file explanation affidavit on oath as to why a wrong address was given in the petition as well as the lapse on the part of the personal guarantor for not communicating/serving the first order of this Tribunal dated 10.05.2024, to the IRP, which was appointed by this Tribunal.”

- 12.** However, in compliance with the extended order of explanation sought by this Tribunal from the Personal Guarantor dated 06.12.2024, an affidavit of explanation in the shape of an affidavit in reply by the Personal Guarantor was filed on 17.12.2024, vide inward diary No. D-9053, giving the following explanation which were recorded with observation in order dated 17.12.2024 are reproduced as below:-



“In compliance with the extended order of explanation sought by this Tribunal from the personal guarantor dated 06.12.2024, an affidavit of explanation in the shape of an affidavit in reply by the personal guarantor has been filed on 17.12.2024, vide inward diary No. D-9053, giving the following explanation:

2. I further state that the address mentioned in the said application is 23, Vasundhara Society, behind Big Bazaar, Vesu, Surat City, Surat, Gujarat -395 007. I state that I was residing at the said address along with my family since the year 1997. However, the aforesaid property had been mortgaged by my father to the State Bank of India against credit facilities availed by the Corporate Debtor, Sysco Industries Ltd. I further state that the State Bank of India took physical possession of the property and subsequently sold it to a third party during the years 2022-2023 under the provisions of the SARFAESI.

5. I state that this Hon'ble Tribunal, vide its order dated 10.05.2024, was pleased to appoint the Applicant as the Interim Resolution Professional (IRP) in the matter. The Hon'ble Tribunal further directed the Applicant and the Registry to serve a copy of the said order within three days. I regretfully state that I did not carefully review the



order at the time and was unaware of this specific direction. I sincerely apologise for this lapse on my part. I humbly submit that the oversight was unintentional and without any mala fide intent, particularly as the co-guarantor had also preferred a petition under Section 94 of the IBC, wherein the order was duly communicated and the final moratorium order was passed.

6. I sincerely apologise for the mistake and I undertake to withdraw the main CP (IB) No. 166 of 2024 to rectify the defects in the application.


Through this affidavit, the Personal Guarantor tendered apology for the mistake and undertakes to withdraw the main C.P. (IB)/166(AHM) 2024 to rectify the defects in the application.

Learned Counsel for the IRP seeks indulgence to file a response to this affidavit. Let same be filed, within a period of seven days. Meanwhile, the Personal Guarantor also undertakes to approach the IRP. “

13. The Personal Guarantor has also filed its reply on 17.12.2024, vide inward diary No. D-9050. The relevant paragraphs of the said are reproduced as under:-



1. *The Personal Guarantor submits that the address mentioned in the said application is 23, Vasundhara Society, behind Big Bazaar, Vesu, Surat City, Surat, Gujarat -395 007. I state that I was residing at the said address along with my family since the year 1997. However, the aforesaid property had been mortgaged by my father to the State Bank of India against credit facilities availed by the Corporate Debtor, Sysco Industries Ltd. I further state that the State Bank of India took physical possession of the property and subsequently sold it to a third party during the years 2022-2023 under the provisions of the SARFAESI Act, 2002. I state that the third party who purchased the property must have demolished the house constructed over the plot.*
2. *I respectfully submit that the mention of the aforesaid address in the Section 94 application was inadvertent and an oversight. This address was included because it was reflected in the loan documents and prior applications filed before various Courts.*
3. *I state that this was a genuine and unintentional error, with no mala fide intent on my part to misrepresent or avoid service of notice. I further affirm that my correct email ID was mentioned in*



the application, and I received the notice issued by this Hon'ble Tribunal via email, as per the order dated 08.11.2024.

4. *I state that this Hon'ble Tribunal, vide its order dated 10.05.2024, was pleased to appoint the Applicant as the Interim Resolution Professional (IRP) in the matter. The Hon'ble Tribunal further directed the Applicant and the Registry to serve a copy of the said order within three days. I regretfully state that I did not carefully review the order at the time and was unaware of this specific direction. I sincerely apologise for this lapse on my part. I humbly submit that the oversight was unintentional and without any mala fide intent, particularly as the co-guarantor had also preferred a petition under Section 94 of the IBC, wherein the order was duly communicated and the final moratorium order was passed.*

14. In furtherance to the reply filed by the Personal Guarantor, the IRP has filed affidavit in response on 08.01.2025, vide inward diary No. D-137. The relevant paragraphs of the same are reproduced as under:

1. *That in pursuant to order dated 17.12.2024, Personal Guarantor visited Resolution Professional on 24.12.2024 wherein Resolution Professional*



explained the procedure for Personal Guarantor under Insolvency and Bankruptcy Code, 2016. Further, RP also stated cost incurred till date to the Resolution Professional as on date in Petition bearing C.P.(I.B) No. 166 of 2024 filed by the Personal Guarantor.

2. *That Resolution Professional informed Personal Guarantor cost incurred by the Resolution Professional till date amounting to Rs.2,95,740/- being calculated from 03.10.2024 to 17.12.2024. The cost sheet has also been circulated to Personal Guarantor vide email dated 23.12.2024. Copy of e-mail dated 23.12.2024 sent by Resolution Professional to Personal guarantor along with cost sheet is annexed hereto and marked as **Annexure-B**.*
3. *That Personal Guarantor agreed to pay the entire Cost shared with him, in the event of withdrawal of the present Company Petition bearing C.P.(I.B.) NO. 166 OF 2024. That Personal Guarantor further communicated that, he wants to pursue Section 94 Petition and submit a repayment plan as per the provisions of the Insolvency and Bankruptcy Code, 2016 and Resolution Professional took note of the same.*



4. On 06.01.2025, Applicant herein sent an email stating that he wishes to withdraw the Application and cure the defects accordingly. Hence, RP seeks liberty from this Hon'ble Tribunal to file appropriate application for withdrawal of C.P.(I.B.) NO. 166 OF 2024 subject to entire cost be paid by the Personal Guarantor as incurred till disposal of withdrawal application. Copy of email dated 06.01.2025 is attached hereto and marked as Annexure- C. Copy of updated cost sheet till 07.01.2025 is attached hereto and marked as **Annexure-D.**

5. In view of the above facts, it is herein prayed that the Hon'ble Tribunal be pleased to consider this affidavit and pleased to pass appropriate orders and grant liberty to Applicant to file affidavit further is required in the interest of justice.

15. However, on 08.01.2025 learned Counsel who appears for the Personal Guarantor wishes to file a revised affidavit within a period of 3 days with advance copy to the opposite side. Thereafter, accordingly on 16.01.2025, vide inward diary No. D-222 a revised affidavit was filed by the Personal Guarantor for withdrawal of the personal insolvency proceedings filed by him U/s 94 of the IBC, 2016.




16. We have heard the learned Counsel for both the parties and perused the documents on record. We have also gone through the report dated 25.10.2024 filed by the IRP, replies filed by the FCs as well as withdrawal affidavits filed by the Personal Guarantor.
17. The IRP has explained the circumstances which prevented him from filing the report under Section 99 of the IBC, 2016, within a period of **ten days** due to not being sufficiently been informed about the appointment by the Personal Guarantor nor co-operated or contacted the IRP.
18. Further, it is seen that the present Company Petition was filed by the Personal Guarantor on 24.04.2024 under Section 94 of the IBC, 2016. And IRP filed its Report only on 25.10.2024 all most after lapse of six months wherein the Personal Guarantor neither co-operated for personal insolvency process nor contacted the IRP about his intention to withdraw the personal insolvency proceedings instead gave the wrong address in the pleadings on which he was no more residing.



19. In the hearing of this Tribunal which was convened on 17.12.2024, it was noted that an Affidavit was filed before this Tribunal by the Personal Guarantor on 17.12.2024 vide diary no. D-9050 an apology was sought from this Tribunal for providing wrong address and it is also stated that he wishes to withdraw the present CP(IB) No. 166 of 2024 and in relation to that, the Ld. Counsel for the Personal Guarantor intimated this Tribunal that the Personal Guarantor wishes to withdraw the Personal Insolvency Resolution Process which was initiated under section 94 of the IBC 2016, in relation to the same the following was duly recorded in proceedings convened on 17.12.2024:

“Through this affidavit, the Personal Guarantor tendered apology for the mistake and undertakes to withdraw the main C.P. (IB)/166(AHM) 2024 to rectify the defects in the application.”

20. Thereafter, on 16.01.2025, vide inward diary No. D-222 a revised affidavit was filed by the Personal Guarantor for



simpliciter withdrawal of the personal insolvency proceedings filed by him U/s 94 of the IBC, 2016.

- 21.** Though, not only IRP but also the one of Financial Creditor has recommended for acceptance of the report of IRP. However, the Personal Guarantor through an aforementioned affidavit has taken U-turn stating *don't wish to continue* with the Insolvency proceedings and want to withdraw the same.
- 22.** It is observed that during this entire period from the date of appointment of IRP to till filing of Report by IRP no such application for withdrawal was filed by the Personal Guarantor before the Tribunal as whose instance the present proceedings were initiated, and enjoyed the benefit of moratorium which commenced on 24.04.2024, under Section 96 of the IBC, 2016 and prevented the Respondent /Financial Creditor to proceed further under the SARFAESI Act and before the DRT, Ahmedabad. In fact, the Personal Guarantor has abused the process of law under the garb of section 94 of the IBC, 2016 to gain undue advantage by



stalling the legitimate recovery process of the Respondent Banks/Creditors.

- 23.** In view of the conduct of the personal guarantor recorded above, it is observed that the Personal Guarantor did not come with clean hands. The personal guarantor filed this Petition U/s 94 of the IBC, 2016 with oblique motive without any intention to submit concrete Repayment Plan only to frustrate the legitimate recovery actions of the Creditors before the competent court of law. Hence, this Tribunal require to deal the present matter with iron hand.
- 24.** Therefore, in view of above facts and observations, the proceedings initiated under Section 94 of the IBC, 2016 through C.P (IB) 166 (AHM) 2024 are hereby withdrawn and terminated.
- 25.** The moratorium commenced in terms of section 96 of the IBC 2016 in relation to all the debts and assets of the Personal Guarantor shall ceases to have effect from the date of this order.





26. Further, **C.P. (IB) 166 (AHM) 2024** filed by the Personal Guarantor is hereby **dismissed** with exemplary a cost of **Rs.5.00 Lakh** to be deposited with the **Prime Minister National Relief Fund**, within a period of seven days from the date of this order.

27. The IRP has claimed Rs. 3,95,073/- for the cost incurred with effect from 03.10.2024 till date for the present process, annexed with the affidavit at Annexure D of IRP date 11.12.2024, which include litigation fee. However, the Personal Guarantor is also directed to pay in lump sum Rs. 3.00 Lakh for the cost incurred by the IRP for conducting the process as well as for litigation fee, within seven days from the date of this order.

28. **IA No. 1667 of 2024** is disposed of accordingly. The IRP stands discharged from his duties.

29. List the matter on **12.02.2025** for reporting compliance.


SAMEER KAKAR
MEMBER (TECHNICAL)


SHAMMI KHAN
MEMBER (JUDICIAL)

VP