



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI
CP (IB) 109/ (CHE)/ 2023**

&

IA (IBC) 763/ (CHE)/ 2024 In CP (IB) 109/ (CHE)/ 2023

*(Under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6(1) 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

K C MOHANAN,
3, Jagjeevanram Street, Pammal,
Chennai, TN – 600 075.

... Applicant/ Personal Guarantor

Order pronounced on 10.10.2025

CORAM

SHRI. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Personal Guarantor: Mr. A. S. Sathish Kumar, PCS

For Respondent: Mr. E. Om Prakash & Mr. R. Imayavaramban, Advocates

For Resolution Professional: Mr. Madhu Desikan (Party in person)

ORDER

(Hearing through hybrid mode)

This application has been filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 ('Rules') by the Applicant/ Personal Guarantor " **K C MOHANAN** ", to initiate the Insolvency Resolution Process in respect of



"K C Mohanan", being the Personal Guarantor for **We Two Engineering Private Limited** ('Corporate Debtor').

SUBMISSIONS OF THE APPLICANT

2. The Applicant has given the particulars of debt in Part-III of the application, including interest for The South Indian Bank Limited as Rs.18,01,89,963.40/- (Rupees Eighteen Crores One Lakh Eighty Nine Thousand Nine Hundred and Sixty Three only), amount of default as Rs.18,01,89,963.40/- (Rupees Eighteen Crores One Lakh Eighty Nine Thousand Nine Hundred and Sixty Three only) and the date of default as 16.05.2022.

3. It is submitted that the Corporate Debtor had availed multiple credit facilities from the South Indian Bank Limited., including Cash Credit, Working Capital Term Loans (restructured), Funded Interest Term Loan (FITL) and Inland Bank Guarantee. The Applicant herein had given personal guarantee to the said loans. In this matter, the Corporate Debtor for whom the Applicant has given Personal Guarantee failed to repay the debt. Upon default by the Corporate Debtor, the Financial Creditor invoked the personal guarantee furnished by the Applicant.

4. It is further submitted that the Financial Creditor issued a demand notice dated 14.07.2022 under Section 13(2) of the SARFAESI Act, 2002, followed by sale notices dated 09.05.2023 and 22.05.2023, proposing to auction the mortgaged/ secured properties of the Applicant to recover the outstanding dues.



5. It is also submitted that as per the particulars of debt furnished, the total outstanding liability amounts to Rs.18,01,89,963.40 (Rupees Eighteen Crores One Lakh Eighty-Nine Thousand Nine Hundred Sixty-Three only), which remains in default since 16.05.2022.

6. It is submitted that the Applicant has disclosed complete details of his assets and liabilities. He has immovable properties at Pammal, Pallavaram (Chennai South), and Sriperumbudur, Kancheepuram District, with an estimated value of over Rs.16 crores, as well as certain movable assets, including motor vehicles and equity shareholding in the Corporate Debtor.

7. It is further submitted that the Applicant has further affirmed that the debt for which this application is filed does not fall under the category of “excluded debts” under Section 79(15)(e) of the Code.

8. It is also submitted that the Applicant has proposed the appointment of Mr. Madhu Desikan, Insolvency Professional (IBBI Reg. No. IBBI/IPA-001/IP-P00579/2017-2018/11021), to act as the Resolution Professional for conducting the insolvency resolution process. The said professional has furnished his written consent to act.

9. The Applicant has also filed proof of submission with the Insolvency and Bankruptcy Board of India (IBBI).

APPOINTMENT OF RESOLUTION PROFESSIONAL

10. This Tribunal vide order dated 23.02.2024 in CP(IB)/109(CHE)/2023, pursuant to the application filed under Section 94 of the Insolvency and Bankruptcy Code, 2016, seeking to initiate the insolvency resolution



process against the personal guarantor appointed **Mr. Madhu Desikan**, with Reg. No: IBBI/IPA-001/IP-P-00579/2017-2018/11021, as the Insolvency Resolution Professional (IRP), to examine the company application and submit a report under section 99 of the Code.

REPORT OF THE RESOLUTION PROFESSIONAL

11. Upon receipt of the appointment, the RP examined the application in accordance with the provisions of the Code and verified its compliance with all statutory requirements under Section 94.

12. The IRP submits that the Applicant/Personal Guarantor, Mr. K.C. Mohanan, had extended a personal guarantee in respect of the credit facilities availed by the Corporate Debtor, We Two Engineering Private Limited, from The South Indian Bank Limited. The aggregate facilities sanctioned amounted to Rs.22,75,97,500/- (As of 14-03-2024 Rs. 20,41,78,389 and as of 13-07-2022 Rs. 16,65,59,056/-) and the account was classified as NPA on 16.05.2022. The guarantees executed by the applicant were duly invoked and demand notice dated 14.07.2022 were issued by the Financial Creditor under Section 13(2) of SARFAESI Act, 2002, followed by auction sale notices dated 09.05.2023 and 22.05.2023 in respect of mortgaged properties of the guarantor.

13. It is submitted that the IRP has verified the documents furnished by the Personal Guarantor, including the said notices, MCA Master Data of the Corporate Debtor, proof of assets and liabilities, and income tax returns. Discussions were also held with the bank officials of The South Indian



Bank Limited., who confirmed the correctness of the particulars furnished in Form A.

14. It is further submitted that on such examination, the IRP found that the application has been made in the prescribed Form A under the 2019 Rules and requisite fees have been duly paid and the debt in question does not fall within the category of “excluded debts” under Section 79(15)(e) of the Code.

15. It is further submitted that the Applicant is not an undischarged bankrupt, nor undergoing fresh start, insolvency resolution, or bankruptcy process, and no similar application has been admitted within the preceding twelve months. And thus, the conditions under Section 94(1) of the Code stand satisfied.

16. It is also submitted that as of 14.03.2024, the total outstanding dues payable by the Personal Guarantor to the Financial Creditor stood at Rs.20,41,78,389/- after accounting for part repayments of Rs.4,02,10,615/- made since July 2022.

17. The IRP has concluded that the Personal Guarantor is clearly liable to the Financial Creditor in respect of the invoked guarantee and that the requirements of the Code for admission of the petition are duly met.

18. Accordingly, the IRP has recommended to this Tribunal that the petition filed under Section 94 of the Code be accepted and that the insolvency resolution process be initiated against K C Mohanan in respect of the personal guarantee extended for the corporate debtor, We Two Engineering Private Limited, and further insolvency resolution process may be initiated against the Personal Guarantor in accordance with law.



19. Observations in the report filed under Section 99 of the code are as follows:

i. Details of debt:

Sl. No.	Particulars	
1	Outstanding Claim	Principal with Interest for South Indian Bank Limited as Rs.22,75,97,500/- (Rupees Twenty Two Crores Thirty One Lakhs Eighty One Thousand Three Hundred and Forty Four only) as on 23.02.2022.
2	Documents establishing PG's Liability	1. Demand Notice dated 14/07/2022, u/s 13(2) of SARFAESI Act, 2002 was sent to Guarantor by South Indian Bank Limited. 2. Tender Cum Auction Sale Notice was issued on 9th May 2023. 3. Tender Cum Auction Sale Notice was issued on 22nd May 2023.

ii. Compliance under Section 94 of IBC

Sec No.	Details of the Sections	Compliance
94 (1)	A debtor who commits default may apply either by personally or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.	Corporate Debtor – M/s We Two Engineering P Ltd had committed a default and their loan was categorized as NPA on 16-05-2022 and the loans to Corporate Debtor was guarantee by PG. Hence it is in order.
94(2)	Where the debtor is a partner of a firm, such debtor shall not apply under this Chapter to the Adjudicating Authority in	Not applicable



	respect of the firm unless all or a majority of the partners of the firm file the application jointly.	
94 (3)	An application under sub-section (1) shall be submitted only in respect of debts which are not excluded debts.	Not applicable
94 (4)	A debtor shall not be entitled to make an application under sub-section (1) if he is— (a) an undischarged bankrupt; (b) undergoing a fresh start process; (c) undergoing an insolvency resolution process; or (d) undergoing a bankruptcy process.	Not applicable
94 (5)	A debtor shall not be eligible to apply under sub-section (1) if an application under this Chapter has been admitted in respect of the debtor during the period of twelve months preceding the date of submission of the application under this section.	On inquiry it is understood that such application has not been made by the Corporate Guarantor
94 (6)	The application referred to in sub-section (1) shall be in such form and manner and accompanied with such fee as may be prescribed.	The relevant fees had been paid through Bharatkosh – Receipt No. 0306230028091 dated 03-06-2023 for Rs. 2000



SUBMISSIONS OF THE RESPONDENT

20. It is contended by the Respondent/ Financial Creditor, South Indian Bank Limited, that the present application arises from the petition filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016, wherein the Interim Resolution Professional has, under Section 99, recommended initiation of Insolvency Resolution Process against the Personal Guarantor, Mr. K.C. Mohanan.

21. It is submitted that the IRP has recommended initiation of process without fully considering the fraudulent intent and conduct of the Applicant. It is contended that the Applicant has attempted to conceal assets, misstate liabilities, and mislead creditors only to take shelter under moratorium and defeat recovery proceedings.

22. It is further submitted that the Corporate Debtor, M/s. We Two Engineering Private Limited., along with the Applicant and co-guarantors, had availed multiple credit facilities from the Bank since 2017, including OD facilities, CCOL, WCTLs, BGs, Term Loans, FITL and ECLGS, aggregating to more than Rs.23.39 crores. The Applicant, being Director and Personal Guarantor, executed multiple sanction letters, acknowledgments of debt, and guarantee agreements between 2017–2022, besides creating mortgage over immovable properties.

23. It is also submitted that despite repeated renewals, the Corporate Debtor defaulted in repayment, leading to classification of the account as NPA on 16.05.2022. Certain mortgaged properties were released upon part payments of Rs.1.25 crores and Rs.2.96 crores, but the remaining dues persisted.



24. It is further submitted that SARFAESI proceedings were duly initiated, including demand notice dated 14.07.2022 and possession notices dated 26.10.2022 and 27.10.2022. However, despite admission of liability, the Applicant neither repaid the dues nor cooperated with the Bank.

25. The Respondent asserts that the Applicant has approached this Tribunal under Section 94 only as a last resort to evade liability, obstruct recovery, and misuse the moratorium. The conduct of the Applicant shows lack of bona fides and suppression of material facts.

26. It is submitted that on 14.02.2025, the total outstanding dues to the Respondent stood at Rs.23,28,67,880.18 (Rupees Twenty-Three Crores Twenty-Eight Lakhs Sixty-Seven Thousand Eight Hundred Eighty and Paise Eighteen only), with further interest and costs payable.

27. It is further submitted that mere inability to repay debt is not a ground to invoke Section 94. The provision cannot be used as a safe haven to frustrate legitimate recovery actions.

FINDINGS OF THE TRIBUNAL

28. We have carefully considered the pleadings, documents, the report submitted by the Interim Resolution Professional under Section 99 of the Insolvency and Bankruptcy Code, 2016 ("the Code"), and the reply filed by the Financial Creditor/Respondent, South Indian Bank Limited.

29. It is not in dispute that the Corporate Debtor, We Two Engineering Private Limited., had availed substantial credit facilities from the Respondent Bank, for which the Applicant, Mr. K.C. Mohanan, stood as a Personal Guarantor. The credit facilities were renewed and enhanced from time to time, and the Applicant had executed multiple sanction letters,



acknowledgments of debt, security documents, and personal guarantee agreements. The account was classified as Non-Performing Asset (NPA) on 16.05.2022, and thereafter, the guarantee was invoked by issuance of a demand notice dated 14.07.2022 under SARFAESI Act, 2002, followed by possession and auction notices.

30. The Interim Resolution Professional, in his report filed under Section 99, has concluded that the Applicant is liable as a Personal Guarantor and has recommended acceptance of the petition under Section 94, primarily on the ground that the procedural requirements under Section 94 have been satisfied, the debt is not an “excluded debt,” and the application was made in the prescribed form with requisite fee.

31. The Respondent/ Financial Creditor, however, has seriously opposed the application, contending that the Applicant has approached this Tribunal not with bona fide intent but only to misuse the process of law, stall the SARFAESI proceedings, and take undue advantage of the moratorium contemplated under Section 96 of the Code. The Respondent has also pointed out that despite repeated admissions of liability, the Applicant failed to repay the dues and instead filed the present application as a last resort to frustrate recovery.

32. On perusal of the records, this Tribunal finds merit in the contentions of the Respondent. The Applicant has, from time to time, renewed the credit facilities, acknowledged his liability, and even secured release of certain mortgaged properties upon part payment. However, the defaults persisted, and despite clear invocation of the guarantee, the Applicant has not taken genuine steps to resolve or discharge the liability.



The present application under Section 94 is seen as an attempt to merely avail the benefit of moratorium rather than to initiate a genuine resolution process.

33. In *Syed Sirajis Salikin Khadri v. Edelweiss ARC (NCLAT, 25.04.2025)*, the petition was dismissed stating the following reasons:

“16. ...The present Section 94 application is clearly yet another salvo on the part of the Appellant to stall the recovery by taking advantage of moratorium. This Page 12 of 13 Company Appeal (AT) (Insolvency) No. 455 of 2025 clearly shows that the Appellant has been ceaselessly orchestrating litigative proceedings and embroiled the Respondent No.1 in these proceedings clearly to subvert the recovery proceedings initiated against them and not for the purpose of the insolvency resolution...”

34. While the IRP has mechanically recommended acceptance of the petition, his report does not take into account the conduct of the Applicant, the pending SARFAESI proceedings, or the Applicant’s attempt to use the Code as a shield against recovery, which is contrary to the legislative intent. Section 94 cannot be invoked as a safe harbour for a guarantor to indefinitely delay or defeat legitimate recovery proceedings of the creditor.

35. In view of the above findings, this Tribunal is not satisfied that a case has been made out for initiation of insolvency resolution process against the Personal Guarantor under Section 94 of the Code. The recommendations made by the Interim Resolution Professional under Section 99 also cannot be accepted.



36. Accordingly, **IA(IBC)/763/(CHE)/2024** the Report filed under Section 99 by the Interim Resolution Professional is **taken on record** and the application **CP(IB)/109/(CHE)/2023** is hereby **dismissed**.

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)