IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.308
C.P.(IB)/15(AHM)2026

Under Section 94 IBC

IN THE MATTER OF:

Awadhesh Narain Tiwari PG of Zippy Cosmetics Pvt. Ltd. ....**Applicant**
V/s
Janaseva Sahakari Bank (Borivali) Ltd ....**Respondent**

ITEM No.309
IA/183(AHM)2026
in
C.P.(IB)/15(AHM)2026

Under Section 99(1) IBC r/w Rule 11 NCLT

IN THE MATTER OF:

Mrs. Deepti Narayan Mundra IRP of PG Awadhesh Narain Tiwari PG of Zippy Cosmetics Pvt. Ltd. ....**Applicant**
V/s
Janaseva Sahakari Bank (Borivali) Ltd. & Ors. ....**Respondent**

Order delivered on: 06/04/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

O R D E R
(Hybrid Mode)

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

SD /-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

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

C.P. (IB) No.15/NCLT(AHM)2026
With
I.A. No.183/NCLT(AHM)2026

Filed under Section 94(1) of the Insolvency & Bankruptcy Code, 2016

C.P. (IB) No.15/NCLT(AHM)2026

In the matter of ***Awadhesh Narain Tiwari***

Awadhesh Narain Tiwari
33, Village Kuru, Post office Kuru,
Amilo, Varansi, Uttar Pradesh-221201

...Applicant/Personal Guarantor

VERSUS

Janaseva Sahakari Bank (Borivalli) Ltd.
'Shivhara', Kasturba Marg No. 2,
Borivali (East), Mumbai 400006.

Its admin office at:
1st Floor, Aravali Business Centre,
Opp. Sodawala Lane, Municipal School,
Ramdas Sutarle Marg, Borivali (West),
Mumbai 400 092
Email: admin@janasevabank.in

... Respondent/Financial Creditor

WITH

I.A. No.183/NCLT(AHM)2026

Mrs. Dipti Narayan Mundra

Interim Resolution Professional
of Personal Guarantor
Awadhesh Narain Tiwari
PG of Zippy Cosmetics Private Limited,
Registered Address:
DBS House, 31, Floor-G-2,
Plot No. 31, Marzban Road,
Bombay Gymkhana, Fort, Mumbai,
Maharashtra-400001

...Applicant/IRP

VERSUS

(1) Awadhesh Narain Tiwari
Personal Guarantor of Corporate Debtors
Zippy Cosmetics Private Limited
Plot No. 13, Sinchai Colony,
Walwadi, Wadi Bhokar Road,
Near Chavara School, Dhule-424002 Maharashtra
E-Mail id. an.tewari@gmail.com

......Personal Guarantor/ Respondent No. 1

(2) Janaseva Sahakari Bank (Borivali) Limited,
Shivhara', Kasturba Marg No. 2,
Borivali (East), Mumbai- 400006
E-Mail id. admin@janasevabank.in

......Financial Creditor/ Respondent No. 2

(3) Zippy Cosmetics Private Limited,
Having office at
Plot No. 27, B. Nanji Industrial Estate,
Kharad Pada, Atha Lohari Road,
Dadra & Nagar Haveli, Naroli, Silvassa,
Dadra & Nagar Haveli, India- 39620
E-Mail id. zippycosmetcicspl.2017@gmail.com

...... Corporate Debtor/ Respondent No. 3

Order pronounced on 06.04.2026

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For the Petitioner/PG	: Mr. Arjun Padhiyar, Advocate
For the Applicant/IRP	: Mr. Harmish Shah, Advocate a. w.
	: Ms. Dipti N. Mundra, IRP in person
For the Respondent/FC	: Mr. Ritesh Patadia, Advocate

O R D E R
***Per:* Bench**

1. The present Company Petition bearing C.P. (IB) No.15/NCLT(AHM)2026 has been filed on 23.12.2025 through e-mode by **Awadhesh Narain Tiwari** (the Petitioner/Personal Guarantor) under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019 seeking initiation of Insolvency Resolution Process in respect of himself as Personal Guarantor to the Corporate Debtor- **Zippy Cosmetics Pvt. Ltd.** for a default of **Rs.2,99,89,937.23/-** in respect of Deeds of Guarantee dated 21.02.2019, 07.08.2021 and

04.08.2022 executed in favour of the Respondent /Financial Creditor.

2. The Petitioner/Personal Guarantor has placed the facts through the Company Petition and documents in the following manner: -

2.1 It is stated that Corporate Debtor - **Zippy Cosmetics Pvt. Ltd** had availed various credit facilities from Janaseva Sahakari Bank (Borivali) Ltd, including Cash Credit and Term Loans aggregating to Rs. 3,00,00,000 as sanctioned vide letters dated 31.08.2018 (Annexure D), 28.06.2021 (Annexure E), and 11.07.2022 (Annexure F).

2.2 The Petitioner executed personal guarantees and related documents including Loan Agreements and Guarantee Deeds dated 21.02.2019, 07.08.2021 and 04.08.2022, along with hypothecation agreements, which are collectively annexed as Annexure G.

2.3 The Corporate Debtor operated the loan accounts regularly until financial difficulties arose, leading to default in repayment obligations. Consequently, the loan account of the Corporate Debtor was classified as Non-Performing Asset on 29.10.2024.

2.4 The Financial Creditor issued Demand Notice dated 06.12.2024 U/s 13(2) of the SARFAESI Act, 2002 (Annexure H) calling upon the Corporate Debtor and the Petitioner as personal guarantor to repay an outstanding amount of Rs.2,99,89,937.23ps. as on 30.11.2024, thereby invoking the guarantee obligations.

2.5 The Petitioner had earlier filed an application under Section 94 which was listed on 26.11.2025 and was permitted to be withdrawn with liberty to refile due to defects in Form A, as per order annexed as Annexure J.

2.6 Proceedings under the SARFAESI Act, 2002 were also further initiated by the Financial Creditor, including order dated 30.09.2025 U/s 14 of the SARFAESI Act, 2002 (Annexure K) and possession notice dated 08.12.2025 (Annexure L), affecting secured assets of the Corporate Debtor and aggravating the liability of the Petitioner.

2.7 The Petitioner has disclosed details of his assets, liabilities, income, and financial position including ITRs for last three years (Annexure C), identity documents (Annexure B), and Corporate Debtor master data (Annexure A), and has stated that the debt is due and payable.

2.8 In view of the above facts, the Petitioner/Personal Guarantor has sought initiation of insolvency resolution process under Section 94 of the Insolvency and Bankruptcy Code, 2016, appointment of

Resolution Professional, and grant of interim moratorium in respect of his debts.

3. On presentation of the Company Petition by the Petitioner/Debtor, this Authority vide order dated 21.01.2026 has appointed the Resolution Professional viz, **Ms. Dipti Narayan Mundra,** having Registration No. IBBI/IPA-001/IP-P02845/2023-2024/14366 as Interim Resolution Professional with directions to issue notice to creditors, obtain responses as per section 97(3) of IBC, 2016 and submit a report under Section 99 of the Code within ten days. The IRP was also directed to file its report through a separate IA.

4. The IRP, in its report dated 04.02.2026 filed through **I.A. No. 183 of 2026,** recommending the admission of the application filed under section 94 of IBC, 2016. The IRP recorded in the report that:-

> *"The RP recommends that the present Application under section 94 of the Code filed by the Personal Guarantor* ***Awadhesh Narain Tiwari*** *deserved to be admitted under Section 100 of the Code and Insolvency Resolution Process be commenced against* ***Awadhesh Narain Tiwari*** *Personal Guarantor to*

M/s Zippy Cosmetics Pvt. Ltd. ("the Corporate Debtor").

5. After issuance of notice, the Respondent/Financial Creditor as well as Personal Guarantor appeared through their Counsel. However, despite due service of Notice, the Corporate Debtor neither appeared nor filed any reply in the matter. The Respondent/Financial Creditor filed reply on 14.03.2026 denying various averments made in the Company Petition as well as I.A. and report. The contentions of the Respondent/Financial Creditor are mentioned hereunder: -

5.1 The Respondent/Financial Creditor submits that the Application filed under Section 94 of the Insolvency and Bankruptcy Code, 2016 is not maintainable and has been filed to delay recovery proceedings initiated under the SARFAESI Act, 2002.

5.2 It is stated that the Corporate Debtor M/s Zippy Cosmetics Pvt. Ltd. had availed loan facilities from the Respondent Bank which were renewed and enhanced from time to time and were also availed by the Personal Guarantor.

5.3 The Respondent submits that the Applicant executed Personal Guarantees dated 21.02.2019, 07.08.2021 and 04.08.2022 in favour of the Respondent Bank to secure the said loan facilities.

5.4 It is stated that the Corporate Debtor and the Personal Guarantor failed to repay the loan facilities as per the terms of sanction and the loan account was classified as Non-Performing Asset on 29.10.2024.

5.5 The Respondent issued Demand Notice under Section 13(2) of SARFAESI Act on 06.12.2024 demanding Rs.2,99,89,937.23 as on 30.11.2024 and thereafter obtained order under Section 14 on 30.09.2025 for taking possession of secured assets.

5.6 It is submitted that the possession proceedings were initiated and scheduled on 26.12.2025, however, the same was deferred due to filing of the present Petition and pendency of Securitization Application No.810/2025 before DRT-II, Ahmedabad.

5.7 The Respondent submits that the present Petition under Section 94 was filed after initiation of recovery proceedings. Due to filing of the Petition, the Respondent deferred possession proceedings scheduled on 26.12.2025. It is stated that the timing of filing indicates that the Petition has been filed to delay enforcement of security interest.

5.8 It is stated that the Applicant has admitted solvency and repayment capacity in the Petition. The Applicant has not disputed execution of guarantee, existence of debt and default. The liability of the Applicant is coextensive with that of the Corporate Debtor. Therefore, the debt and default stand admitted.

5.9 It is submitted that the Resolution Professional has recommended admission of the Petition without examining the requirements under Section 94 and that admission would result in moratorium under Section 96 affecting SARFAESI enforcement rights of the Respondent.

5.10 In view of the above facts, the Respondent has sought rejection of the Company Petition filed under Section 94, dismissal of I.A.183(AHM)2026 and such other orders as deemed fit by the Hon'ble Tribunal; no Annexures or precedents are relied upon in the present Reply.

6. The Petitioner/Personal Guarantor also filed reply on 25.03.2026 and Written Submissions on 01.04.2026. The contentions of the Petitioner/Personal Guarantor are mentioned hereunder: -

6.1 The Petitioner/Personal Guarantor has reiterated and adopted the contents of the Company Petition filed under Section 94(1) of the Code and submits that the Resolution Professional has examined the aspects of debt, default, invocation of guarantee and limitation and has recommended admission of the Petition under Section 100 of the Code, thereby indicating that the conditions prescribed under the Code stand fulfilled.

6.2 It is stated that the Financial Creditor has admitted that the Personal Guarantee was executed, that default has occurred by the Corporate Debtor, and that demand notice dated 06.12.2024 under Section 13(2) of the SARFAESI Act, 2002 was issued to the Corporate Debtor and the Personal Guarantor, and therefore the existence of debt and default is not disputed.

6.3 It is stated that the objection of the Financial Creditor is that the Petition under Section 94 is not maintainable and is filed to delay recovery proceedings under the SARFAESI Act, 2002, and the Petitioner/Personal Guarantor has denied the same and submitted that no supporting material or document has been produced to establish such allegation.

6.4 It is stated that the Petition has been filed to initiate personal insolvency resolution and to submit a repayment plan under Section 105 of the Code and that the filing of such Petition is a statutory right under Section 94 and cannot be treated as misuse of process merely because recovery proceedings are pending.

6.5 It is stated that in the Written Submissions the Petitioner/Personal Guarantor has explained that an earlier Petition filed on 17.11.2025 was withdrawn due to defects and the present Petition was refiled on

23.12.2025 after curing defects and that the loan account was classified as NPA on 29.10.2024 and the Petitioner is liable as Personal Guarantor for the debt of the Corporate Debtor.

6.6 The Petitioner/Personal Guarantor has submitted that upon filing of the Petition under Section 94(1), interim moratorium under Section 96 of the Code comes into operation and stays proceedings against the Personal Guarantor and that such statutory effect cannot be considered as an act to delay recovery and that no application under Section 65 has been filed by the Financial Creditor.

6.7 The Petitioner/Personal Guarantor has relied upon precedents including *Getz Cables Pvt. Ltd. v. State Bank of India and Anr. (2024) ibclaw.in 766 NCLAT, Innoventive Industries Ltd v ICICI Bank Ltd (2018) 1 SCC 407, Indian Overseas Bank v. RCM Infrastructure Ltd. (2022) 8 SCC 516, Sanjay Dhingra v. IDBI Bank Ltd 2024 SCC Online Del 4521, Arrow Business Development Consultants Pvt Ltd v. Union Bank of India (2025) ibclaw.in 4130 HC* and *Rakesh Kumar Gupta v. Mahesh Bansal (2020) ibclaw.in 227 NCLAT* to show that pendency of SARFAESI or DRT proceedings does not bar insolvency proceedings and that the Code has overriding effect.

6.8 The Petitioner/Personal Guarantor has further submitted that insolvency proceedings are distinct from recovery proceedings and that the Financial Creditor has the option to opt out and enforce its security and therefore no prejudice is caused by admission of the Petition and that no annexures are specifically relied upon apart from pleadings already on record.

7. We have heard the Ld. Counsel for the Personal Guarantor, Ld. Counsel for the IRP as well as Ld. Counsel for the Financial Creditor and perused the material available on record including the Report filed by the IRP under Section 99 of the Code.

8. This Adjudicating Authority has examined the Company Petition in terms of Section 94(3) of the Code and is satisfied that the application is complete in all respects, the debt is due and payable, and the default has occurred. However, the issue for consideration is whether the present application has been filed with bona fide intent for insolvency resolution.

9. It is not in dispute that the Corporate Debtor- **Zippy Cosmetics Pvt. Ltd.** had availed financial facilities from the Respondent/Financial Creditor and that the Petitioner herein had executed Deeds of Personal

Guarantee dated 21.02.2019, 07.08.2021 and 04.08.2022 securing the said facilities. It is also an admitted position that the loan account was classified as Non-Performing Asset on 29.10.2024 and demand notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 06.12.2024.

10. It is further evident from the record that the Financial Creditor had already initiated recovery proceedings under the SARFAESI Act, 2002, including obtaining an order under Section 14 dated 30.09.2025 and issuance of possession notice dated 08.12.2025. The possession proceedings were scheduled to be undertaken on 26.12.2025.

11. The chronology of events assumes significance. The earlier application filed by the Petitioner under Section 94 was withdrawn on 26.11.2025 with liberty to refile. The present application came to be filed on 23.12.2025, i.e., immediately prior to the scheduled possession proceedings under SARFAESI.

12. From the above sequence, it prima facie appears that the present Application has been filed at a stage when coercive recovery measures had reached an advanced stage and imminent possession of secured assets was to be taken by the Financial Creditor.

13. The primary objection of the Financial Creditor is that the present Application is not a bona fide invocation of the insolvency resolution mechanism but is a device to stall the recovery proceedings under SARFAESI Act, 2002.

14. We find substance in the aforesaid contention of the Financial Creditor. Though Section 94 of the Code provides a statutory right to a Personal Guarantor to initiate insolvency resolution process, such statutory right is required to be exercised bona fide and not for any collateral purpose and cannot be exercised in a manner that defeats the object of the Code or results in abuse of process, as recognized under Section 65 of the Code.

15. The conduct of the Petitioner is required to be examined in the light of the surrounding circumstances. The timing of filing of the present Application, immediately prior to the scheduled possession proceedings, coupled with the fact that an earlier application was withdrawn and re-filed, clearly indicates that the present proceedings have been initiated with the intent to stall the possession proceedings scheduled on 26.12.2025 under the SARFAESI Act, 2002 as the Petitioner was unsuccessful in Securitization Application No.810/2025 filed U/s 17 of the SARFAESI Act, 2002 before DRT-II, Ahmedabad.

16. It is further noted that the Petitioner had already invoked remedy under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, Ahmedabad, which did not yield favourable relief, and immediately thereafter the present application has been filed, further reinforcing the inference of forum shopping and lack of bona fide intent.

17. It is also pertinent to note that the Petitioner has not disputed the debt, default, or execution of guarantee. Rather, the liability is admitted. No material has been placed on record to indicate any bona fide intent towards insolvency resolution or restructuring of debts.

18. The object of the Code is resolution of insolvency in a time-bound manner and not to provide a shield to defaulters to indefinitely delay recovery proceedings initiated by creditors. The overriding effect under Section 238 of the Code cannot be invoked to legitimize proceedings which are otherwise found to be lacking in bona fides or initiated with collateral purpose.

19. While it is true that insolvency proceedings can run parallel to SARFAESI proceedings and that the Code has an overriding effect, the same does not mean that the provisions of the Code can be invoked as a tactical measure to obstruct recovery, especially when the facts indicate lack of bona fides.

20. In the present case, the sequence of events, timing of filing, and absence of any substantive effort towards resolution leads us to the conclusion that the present Application is a misuse of the provisions of the Code.

21. The Hon'ble Supreme Court as well as the Hon'ble NCLAT have consistently held that proceedings under the Code should not be permitted to be used for purposes other than insolvency resolution and that mala fide or collusive applications are liable to be rejected.

22. The Hon'ble National Company Law Appellate Tribunal in ***Syed Sirajis Salikin Khadri v. Edelweiss Asset Reconstruction Company Ltd. & Anr.,*** **(2025)**

ibclaw.in 294 NCLAT has categorically held that where proceedings under Section 94 are initiated only at a stage when recovery proceedings under the SARFAESI Act have reached an advanced stage and the petition is filed merely to delay or frustrate such recovery proceedings, the same amounts to **abuse of the insolvency framework** and cannot be entertained.

23. Though the Petitioner has relied upon ***Getz Cables Pvt. Ltd. vs State Bank of India (Company Appeal (AT) (Insolvency) No.1953 of 2024***) to contend that parallel proceedings are permissible, the said judgment clarifies that "**something more**" such as conduct, timing and surrounding circumstances must be considered, which in the present case establishes lack of bona fide intent. The other judgments relied upon by the Petitioner are also distinguishable on facts and do not apply where the Petition is found to be lacking bona fides.

24. In view of the cumulative facts including the timing of filing, advanced stage of SARFAESI proceedings, absence of any bona fide resolution intent, and conduct of the Petitioner, this Adjudicating Authority is satisfied that the present application has been initiated with malicious intent for a purpose other than insolvency resolution, thereby attracting the principles underlying Section 65 of the Code, which empower this Authority to prevent abuse of process, even suo motu.

25. Though the Interim Resolution Professional has recommended admission of the Company Petition under Section 99 of the Code, this Adjudicating Authority is not bound by such recommendation. Upon independent examination of the material on record, this Adjudicating Authority finds that the report does not examine the surrounding circumstances, including timing of filing, pendency of SARFAESI proceedings and conduct of the Petitioner, which are relevant for determining bona fide intent. Accordingly, the recommendation of the Interim Resolution Professional is not accepted.

26. In view of the aforesaid facts and circumstances, we are of the considered opinion that the present Company Petition filed under Section 94 of the Code is not maintainable and is liable to be dismissed as an abuse of the process of law.

27. The circumstances of the case prima facie indicate that the filing of the Company Petition was intended to obtain the benefit of interim moratorium under Section 96(1) of the Insolvency and Bankruptcy Code, 2016 by invoking the provisions of the Code in a manner inconsistent with its object, intent and against the Financial Creditor. Therefore, conduct of the Petitioner warrants imposition of costs.

28. Consequently, **C.P. (IB) No.15/NCLT(AHM)2026** stands **dismissed** with a cost of **Rs. 2,00,000 (Rupees Two Lakhs only),** considering the timing of filing, repeated invocation of remedies, and abuse of process resulting in delay of lawful recovery proceedings. This cost is imposed in exercise of the inherent powers of the Tribunal under Rule 11 of the NCLT Rules, 2016.

29. The Petitioner/Personal Guarantor is directed to deposit the cost with ***Prime Minister National Relief Fund*** within 15 days from the date of this order and place on record proof of deposit with the Asstt. Registrar with a copy to the Respondent/Financial Creditor. Failure to do

so shall entail appropriate legal consequences, including contempt as well as recovery in accordance with law

30. In view of dismissal of the main Company Petition, **I.A. No.183/NCLT(AHM)2026** filed by the IRP having become infructuous and is accordingly disposed of.

31. The interim moratorium which commenced under Section 96(1) of the Insolvency and Bankruptcy Code, 2016 shall cease to have effect from the date of this order.

32. It is clarified that dismissal of the present Company Petition shall not preclude the Respondent/Financial Creditor from continuing recovery proceedings under the SARFAESI Act, 2002, Recovery of Debts and Bankruptcy Act, 1993 and other applicable laws.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

SD/-

SHAMMI KHAN
MEMBER (JUDICIAL)

RK