

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 741 & 742 of 2026

[Arising out of Orders dated 25.03.2026 passed by the Adjudicating
Authority (National Company Law Tribunal, Chandigarh Bench, Court – I,
Chandigarh), in I.A. No. 1743/2024 & I.A. No. 1924/2024 in C.P. (IB)
No.148/Chd/2024]

IN THE MATTER OF:

Ashwani Kumar Oberoi

...Appellant

Versus

State Bank of India & Ors.

...Respondents

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Mr. Kunal Godhwani and Ms. Kinjal Chadha, Advocates.

For Respondents : Mr. Anand Chhibbar, Sr. Advocate with Ms. Swati Vashisht, Advocate for R-3 & R-4.

Mr. Harshit Khare, Mr. Prafful Saini, Mr. Ayuj Agarwal and Mr. Brijesh Gupta, Advocates for R-1/SBI.

Mr. Vinesh Sharma and Ms. Nandini Gupta, Advocates for RP/R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

These two appeals by a personal guarantor have been filed challenging two separate orders dated 25.03.2026 passed by the adjudicating authority (National Company Law Tribunal, Chandigarh Bench, Court – I, Chandigarh) in I.A. No. 1743/2024 and I.A. No. 1924/2024 filed by the appellant in proceeding under Section 95 of the Insolvency and Bankruptcy Code, 2016, (for short the 'IBC' or the 'Code') being C.P. (IB) No.148/(CHD)/2024.

Adjudicating authority by the impugned order has rejected both the applications, aggrieved by which order, these appeals have been filed.

- 2.** Brief facts of the case to be noticed for deciding these two appeals are:
- i. The State Bank of India (SBI) granted various credit facilities to Kirtiman Cements & Packaging Industries Limited (the corporate debtor) which facilities included the Cash Credit Limit, SLC, Term Loan – I and Term Loan – II sanctioned on 28.01.2019 amounting to Rs.29,23,00,000/-.
 - ii. Appellant executed a personal guarantee dated 28.01.2019 to secure the above financial facilities. Immovable property owned by the appellant were also mortgaged towards security of loan.
 - iii. On 27.07.2019, loan account of the corporate debtor was classified as Non-Performing Asset (NPA) by SBI.
 - iv. On 31.12.2019, notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') was issued by the SBI to the corporate debtor as well as the personal guarantors including the appellant invoking the guarantee and asking the noticee to repay the dues of Rs.29,00,25,067/- as on 31.12.2019 within 60 days.
 - v. No repayment having been made, the Bank enforced its rights under Section 13(4) of the SARFAESI Act by issuing possession notice. Bank also took symbolic possession of the assets and issued auction notice for Plot No. M-31, Industrial Area, Yamunanagar on 19.03.2024 asking
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the personal guarantor to make the payment before the e-auction to be held on 11.04.2024. Auction notice was published on 25.03.2024 in the newspaper. In the auction held on 11.04.2024, the asset was auctioned in favour of the respondents No. 3 & 4.

- vi. Auction purchaser paid an amount of 25% and sale was confirmed by the SBI in favour of the auction purchaser on 11.04.2024 itself. Sale confirmation was issued on 12.04.2024 in favour of the auction purchaser.
- vii. On 27.04.2024 after sale having been confirmed, the appellant filed an application under Section 94 of the IBC being C.P. (IB) No.148/CHD/2024. Objection was raised to the applications filed by the appellant and the application was returned as defective on 30.05.2024 and it was re-filed on 04.06.2024 by the appellant.
- viii. On 31.05.2024, Sale Certificate was issued in favour of the auction purchaser.
- ix. The appellant also filed a Securitization Application No.340/2024 dated 20.05.2024 before the Debt Recovery Tribunal (DRT) challenging the auction dated 11.04.2024 conducted by the Bank.
- x. The application under Section 94 came for consideration on 10.06.2024 before the adjudicating authority, on which date, learned counsel for the Bank appeared and informed the Court that auction has been conducted on 11.04.2024. In Section 94 application, I.A. No.1743/2024 dated 04.08.2024 was filed by the appellant seeking a

direction against the respondent from proceeding to take physical possession of property on the ground that application has been filed on 27.04.2024 and Sale Certificate was issued on 31.05.2024. In the application, appellant has only impleaded the SBI and District Magistrate, Jagadhri.

- xi. Another application I.A.1924/2024 was filed by the appellant dated 18.08.2024, where following prayers have been made:

“It is therefore respectfully prayed that this Hon’ble Tribunal may be please to order the respondents to set aside the sale certificate of property of the applicant/personal guarantor to corporate debtor i.e. Plot No.M-31. Industrial Area, Yamunanagar inspite of the fact that the present petition had been filed on 27.04.2024 and certificate of sale has been issued on 31.05.2024 which is after filing of the petition.”

- xii. Both the applications came for consideration before the adjudicating authority. Applications were opposed by the Bank. It was stated by the Bank that appellant has earlier approached the DRT in Securitization Application No.340/2024 seeking similar relief of stay on dispossession which was rejected on 09.08.2024. Adjudicating authority after hearing the parties by the impugned order dated 25.03.2026 rejected the I.A.1743/2024. Adjudicating authority held that the application filed by the appellant does not merit any acceptance. It was held that rights of the applicants came to an end on 12.04.2024 when the sale was confirmed in favour of the auction purchaser and subsequent filing of Section 94 of the IBC cannot have effect of unsettling a confirmed sale. Adjudicating authority has noted

the conduct of the applicant. It is observed that applicant had sufficient opportunities to take appropriate steps towards outstanding dues. No such steps were taken and applicant chose to file an application under Section 94 only when auction was concluded on 11.04.2024 and sale was confirmed on 12.04.2024 and the conduct of the appellant is only to attempt to stall the recovery at a belated stage which cannot be countenanced. In paragraph 20 & 21 of the order, following was held:

“20. *It is also necessary to take note of the conduct of the Applicant. It is observed that the Public Auction Notice under the SARFAESI Act was issued on 25.03.2024 and the Applicant had sufficient opportunity prior thereto to take appropriate steps towards outstanding dues. However, no such steps were taken and the Applicant chose to initiate proceedings under the Code only after the auction was conducted on 11.04.2024 and the sale stood confirmed on 12.04.2024. It is further noted that the Applicant had also challenged the auction proceedings before the Debts Recovery Tribunal-II, Chandigarh, which by order dated 09.08.2024 in SA No. 340/2024, observed that the action of the secured creditor could not prima facie be said to be erroneous. Such conduct of the Applicant indicates an attempt to stall the recovery process at a belated stage, which cannot be countenanced.*

21. *In view of the foregoing discussion, this Adjudicating Authority is of the considered view that the present application does not merit acceptance. The rights of the Applicant came to an end on 12.04.2024, when the sale was confirmed in favour of Ms. Aarushi Mehta and Ms. Prabhsimran Kaur being the H1 bidders. The subsequent filing of the application under Section 94 of the Code on 29.04.2024 cannot have the effect of unsettling a confirmed sale, particularly when the interim moratorium under Section 96 operates prospectively from the date of filing of the application. Accordingly, the steps taken by the Respondents, including the issuance of Sale Certificate dated 31.05.2024 and proposed action for taking physical possession of the property bearing Plot No. N-31,*

Industrial Area, Yamunanagar, cannot be said to be in violation of Section 96 of the Code.”

- xiii. Other application I.A.1924/2024 has been dismissed relying on the order passed in I.A. No.1743/2024.
- xiv. Aggrieved by the aforesaid two orders, these two appeals have been filed.

3. We have heard learned Sr. counsel Mr. Krishnendu Dutta along with Mr. Kunal Godhwani appearing for the appellants as well as learned counsel Mr. Harshit Khare appearing for the SBI and learned Sr. counsel Mr. Anand Chibbar appearing for the auction purchaser.

4. Learned Sr. counsel Mr. Krishnendu Dutta appearing for the appellant submits that adjudicating authority committed error in rejecting I.A. No.1473/2024. Application under Section 94 was filed by the appellant on 27.04.2024, whereas although auction was held on 11.04.2024 but Sale Certificate was not issued by that time. Sale Certificate was issued on 31.05.2024 which could not have been issued. Learned counsel for the appellant submits that judgment of the Hon'ble Supreme Court in ***'Indian Overseas Bank' Vs. 'RCM Infrastructure Ltd. & Anr.'*** reported in **[(2022) 8 SCC 516]** fully covers the issue. It is submitted that the transfer in favour of auction purchaser is complete only when Sale Certificate is issued and on 27.04.2024 when Section 94 application was filed, no Sale Certificate was issued, thus due to moratorium under Section 96, no Sale Certificate could have been issued which ought to be set aside by the adjudicating authority. It is submitted that adjudicating authority has not correctly distinguished the

judgment of the Hon'ble Supreme Court in **'Indian Overseas Bank' (supra)**. Learned counsel for the appellant has also placed reliance on the judgment of the Bombay High Court in **'Arrow Business Development Consultants Private Limited' Vs. 'Union of India'** in [Writ Petition No. 11132 of 2025].

5. Learned counsel for the SBI refuting the submissions of the learned counsel for the appellant submits that the present is the case where appellant abusing the process of law has filed Section 94 application after auction was held on 11.04.2024 and sale was confirmed on 12.04.2024. It is submitted that by virtue of amended Section 13(8) of the SARFAESI Act, appellant has right to redeem the mortgaged property still publication of auction notice. Auction notice having been published on 25.03.2024, the right of appellant to redeem the mortgaged have come to an end. No right was left in the appellant after publication of auction notice. Learned counsel for the respondent relying on the subsequent judgment of Hon'ble Supreme Court in **'Celir LLP' Vs. 'Bafna Motors (Mumbai) Pvt. Ltd. & Ors.'** reported in [(2024) 2 SCC 1] submitted that Hon'ble Supreme Court in the above case has noticed the amended provisions of Section 13(8) of the SARFAESI Act and submits that after publication of the auction notice, the right of appellant to redeem the mortgaged have come to an end. In the above case, the High Court has interfered with the auction held in favour of the auction purchaser by directing Bank to permit redemption of mortgage by payment of the amount, which order was set aside. It was held that after the sale was confirmed in favour of auction purchaser, auction purchaser was entitled for issue of Sale Certificate. It is submitted that above judgment of Hon'ble Supreme Court

covers the issue. No right is left. Learned counsel for the respondent has also relied on the judgment of this Tribunal in **‘Pratibha Industries Ltd., through its Liquidator Mr. Avil Menezes’ Vs. ‘Yes Bank Ltd. & Anr.’** reported in **[2025 SCC OnLine NCLAT 1870]**.

6. We have considered the submissions of the counsel for the parties and perused the records.

7. We may first notice the judgment of the Bombay High Court which is a recent judgment of the Bombay High Court delivered on 18.03.2026 in **‘Rozina Firoz Hajiani & Ors.’ Vs. ‘Union of India & Ors.’** in **[Writ Petition (L) 5156/2026]**, where Bombay High Court has noticed the disturbing trend when manner in which chronic defaulters are taking resort to the provisions of the Insolvency and Bankruptcy Code, 2016. In paragraphs 1 & 2 of the judgment, Bombay High Court made following observations:

“1. A disturbing trend is noticed by this writ Court as to the manner in which chronic defaulters are taking resort to the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘the IBC’ for short) to frustrate secured creditors and auction purchasers from proceeding, in accordance with law, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ‘the Securitisation Act’ for short).

2. In a number of such matters, it is found that the borrowers/ guarantors act as fence sitters and do not take any steps when the secured creditors proceed under Section 13(2) of the Securitisation Act and take further consequential steps, till the culmination of the process and auction purchasers coming into the picture. At the stage when the auction sale has been conducted and the auction purchaser has come into the picture, in a few instances, even after the sale certificate is issued, when physical possession of the

secured asset is about to be handed over to the auction purchaser, the original borrowers/guarantors initiate collusive proceedings under Section 94 or Section 95 of the IBC, claiming triggering of moratorium under Section 96 thereof, the moment such proceedings are filed before the National Company Law Tribunal (NCLT). As a consequence, all steps taken under the provisions of the Securitisation Act, suddenly come to a standstill and such borrowers/guarantors, who are defaulters, wear a cloak of immunity under the garb of moratorium triggered under Section 96 of the IBC. In such a situation, the secured creditor and/or the auction purchaser are required to approach the NCLT and thereafter, the proceedings reach the National Company Law Appellate Tribunal (NCLAT) and then the Supreme Court, till which time the auction purchaser is completely frustrated, despite having parted with consideration in terms of the bid amount.”

8. We need to first notice the facts of the above case which was a case of resorting to IBC proceedings by filing a Section 94 application. In the above case, Bank issued notice under Section 13(2) of the SARFAESI Act on 07.03.2017 and thereafter filed an application under Section 14 for taking possession. Certain One-Time Settlement (OTS) proposals were given by borrower. Bank issued notices for auction. One OTS proposal was also sanctioned but payments were not made. On 25.11.2024, Bank issued 10th Auction which was scheduled on 13.12.2024, at that stage, the borrower approached the DRT by filing an application. Auction was conducted on 13.12.2024 and petitioner was declared as successful auction purchaser. The personal guarantor filed petition under Section 94. On 02.09.2025, NCLT held that secured assets stood excluded from the property of the personal guarantor prior to commencement of moratorium under Section 96, the said order was challenged by the personal guarantor before this Tribunal in **‘Maria Kuresh Rajkotwala’ Vs. ‘Rozina Firoz Hajiani and Ors.’**, in [Comp. App.

(AT) (Ins.) No. 1644 of 2025]. This Tribunal also dismissed the appeal. In paragraph 8, this Tribunal laid down following:

“8. From the facts which has been brought on the record it is clear that appellant has filed the Section 94 application in the NCLT on 24.12.2024 on which date receipt was issued. The assets which are covered by the directions issued by the adjudicating authority were auctioned on 13.12.2024 in favour of the Auction Purchaser which was confirmed on 18.12.2024. Even if we accept the submission of the appellant that sale certificate was signed on 26.12.2024 and 24.12.2024 was only unsigned sale certificate, that shall have no effect on the competition of the auction which took place on 13.12.2024 and confirmed on 18.12.2024 by the Bank. The rights of the personal guarantor came to an end after auction held on 13.12.2024 was confirmed.”

9. Personal guarantor filed a civil appeal against the said judgment of this Tribunal dated 30.10.2025 in the Hon’ble Supreme Court, which civil appeal was also dismissed on 26.02.2026.

10. The Writ Petition before the Bombay High Court was filed by the auction purchaser, aggrieved by proceedings initiated by the guarantor before the DRT. Bombay High Court noticed the entire proceedings and the sequence of events and in paragraphs 24 & 25 of the judgment in **‘Rozina Firoz Hajiani & Ors.’ (supra)** has made following observations:

“24. The object of the IBC is to ensure that insolvency resolution of corporate persons and individuals is undertaken in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all stake holders. The IBC emphasizes upon an effective legal framework for the timely resolution of insolvency and bankruptcy, so that an opportunity is made available for revival of the debtor to support development of credit markets and to encourage entrepreneurship, with liquidation being the last resort.

The whole purpose of enactment of IBC is for improving the ease of doing business, facilitating more investments, leading to higher economic growth and development in the country.

25. We find that the manner in which the defaulting borrowers and guarantors have been taking recourse to the provisions of the IBC, particularly Sections 94, 95 and 96 thereof, shows that such strategies are frustrating the very object of the IBC, apart from paralyzing the whole process of lawful steps taken by secured creditors in respect of secured assets under the provisions of the Securitisation Act. As noted hereinabove, chronic defaulters of loan and financial facilities, when facing the heat of proceedings initiated by secured creditors reaching culmination, scamper to file proceedings under Sections 94 and 95 of the IBC in a collusive manner, so as to claim that the moment such proceedings are initiated, moratorium is triggered under Section 96 thereof, as a result of which further lawful proceedings are stayed. The filing of such proceedings under the IBC is only with the object of frustrating the legal process and it has nothing to do with the object with which the IBC was enacted.”

11. When we look into the facts of the present case, the present is the case where DRT in the Securitization Application filed by the appellant has refused to grant any relief by order dated 09.08.2024, where after the two applications have been filed by the appellant as noted above. The object and purpose of the IBC by Section 94 is to grant an opportunity to the personal guarantor to seek insolvency resolution of the personal guarantor. Section 94(1) provides as follows:

“94. Application by debtor to initiate insolvency resolution process.–

(1) A debtor who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.”

12. This Tribunal had occasion to consider the object and purpose of Section 94 in large number of cases. In cases, where it is apparent that personal guarantor has filed Section 94 application only for the purposes of obtaining a moratorium to thwart the proceedings as well as when proceedings are at verge of completion, filing of Section 94 application showed lack of good faith. In **[Comp. App. (AT) (Ins.) No.455/2025]**, in the matter of **‘Syed Sirajis Salikin Khadri’ Vs. ‘Edelweiss Asset Reconstruction Company Limited & Anr.’** this Tribunal has affirmed the order of the adjudicating authority where Section 94 application was rejected which was filed only to obtain benefit of moratorium to scuttle the proceedings under SARFAESI Act. In paragraphs 13, 14 & 16, following was laid down:

“13. When we look at the impugned order, we find that the Adjudicating Authority at para 5 thereof has exhaustively listed out the details of the multiple legal proceedings initiated by the Appellant before various Courts/Tribunals/Forums. This leaves no doubt in our mind that each time physical possession of the secured residential premises was sought to be taken by the Respondent No.1 by following the due process laid down under the SARFAESI Act, the Appellant tried to circumvent the possession notice and stall/defer these proceedings by initiating some legal proceeding or the other. This pattern of conduct of the Appellant underlines an entrenched pattern of evasion of recovery proceeding on one pretext or the other.

14. This now brings us to the filing of the Section 94 application on 03.12.2022 and its timing. We notice that Section 94 application was filed by the Appellant within weeks after the issue of a possession notice upon them on 11.11.2022 by the Respondent No.1. When after the 4th SA was disposed of, the Appellant realised that it had failed to secure any further relief from the DRT and that dispossession from the subject residential premises was imminent that the present Section 94 petition was filed on 03.12.2022 and a communication sent on 06.12.2022 to the Respondent

No.1 to hold its hand from taking over possession of the residential premises on account of moratorium. This letter of 06.12.2022 clearly reveals the intention of the Appellant to stall the recovery proceedings by taking undue benefit of the moratorium provisions. Filing of the Section 94 application at this juncture leaves no room for doubt in our mind that these proceedings were not initiated with the intent of genuine insolvency resolution but as a tool to obstruct lawful recovery of enforcement with the manifest intent of the Appellant being to seek refuge under the moratorium provision under Section 96 of the IBC in an effort to prevent enforcement of possession of the secured residential premises.

16. This is a case clearly where the Appellant on one excuse the other has all along tried to delay the handing over of the security to the Respondent No.1. We find that steps under SARFAESI Act have been pending since 2012. The Appellant has consistently misused the benevolent indulgence afforded by various adjudicatory forums to the Appellant in the past to resolve the matter. Each time the Appellant got relief from the court it slept over its commitment to either handover the subject residential premises to the Respondent No.1 or to make payment by selling the said property to clear the outstanding debt. The present Section 94 proceedings have been filed 13 years after symbolic possession had been taken by the Bank of India on 10.12.2012. We notice that when the SARFAESI proceedings were on the verge of completion and all manoeuvres adopted by the Appellant to stall and delay the recovery proceedings having come to a naught, the Appellant now sought to wriggle out of this situation by resorting to filing of the Section 94 application. In view of the persistent lack of good faith displayed by the Appellant, the Adjudicating Authority cannot be said to be wrong in concluding that the Appellant on having received the possession notice once again from the Respondent No.1 has again tried to dodge the said notice by filing a Section 94 application. Hence, the reliance placed by the Appellant on the judgment in **Getz Cables judgment supra** is misplaced. The facts of the present case and that of **Getz Cables supra** are distinguishable. In the matter of **Getz Cables supra**, the insolvency proceedings under Section 94 of IBC was instituted immediately after initiation of SARFAESI proceedings. In comparison to the close proximity between the

*SARFAESI proceedings and filing of Section 94 petition in **Getz Cables judgment** supra, in the present case there is a yawning time-gap of more than a decade between the SARFAESI and Section 94 proceedings. In the present case, the SARFAESI proceedings have been going on since 2012 and the Appellant has unleashed a chain of litigations which have been doggedly and relentlessly pursued in various courts of law to derail the recovery proceedings. Section 94 proceedings have been initiated by the Appellant more or less coinciding with the issue of possession notice dated 11.11.2022 by Respondent No.1. 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 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. In the given fact situation, we are inclined to agree with the findings returned by the Adjudicating Authority that the Appellant had approached the Adjudicating Authority by filing the Section 94 application with an intent other than insolvency resolution.”*

13. To the same effect is another judgment of this Tribunal in **‘Mrs. Vimla Devi’ Vs. ‘Karnataka Bank Limited’** in **[Comp. App. (AT) (Ins.) No. 2027/2024]**, where this Tribunal again has affirmed the decision of the adjudicating authority rejecting Section 94 application by two guarantors. It was held that filing of Section 94 application signifies the ulterior motive of the appellant taking refuge of moratorium to hinder and delay the recovery proceedings. It is useful to notice paragraphs 12, 14 & 18 which are as follows:

***“12.** When petition No. 455 of 2023 was dismissed for non-prosecution, the Appellant did not challenge the dismissal of this petition. Instead, the Appellant once again slipped into the dormant mode until the Respondent once again initiated steps to take physical possession of the mortgaged property. We notice that*

when the mortgaged property was to be again taken over on 30.05.2024, the Appellant filed the second Section 94 petition vide No. 380 of 2024. Curiously, the date of filing of the first and second Section 94 petitions was always one day prior to the date fixed by the Court Receiver to take over possession of the mortgage property. This timing cannot be treated as a simple case of accidental coincidence but signifies the ulterior motive of the Appellant taking refuge of moratorium under Section 96 of the IBC and to hinder and delay the recovery proceedings as and when initiated by the Respondent Bank.

14. *When we look at the above order it is clear that the Appellant did not appear either on the first or the second revised call and hence the matter was dismissed for non-prosecution. It clearly shows that the Appellant was not serious of defending her case but was dragging the matter. When the Section 94 petition had already been dismissed once earlier, any vigilant litigant would not be as lackadaisical the second time. The same conduct of the Appellant of non-appearance on the dates of hearing had continued even after filing of the second section 94 petition. We are not persuaded to believe that technical malfunction as stated by the Appellant prevented the appearance especially when the matter was again taken up on revised call and the Appellant went unrepresented. We also do not find that the Adjudicating Authority upto this stage was ever informed about the alleged adverse medical condition of the Appellant. The medical prescriptions have been placed before this Tribunal for the first time and hence we wish to refrain from making any observations on the illness of the Personal Guarantor. The conduct of the litigant is clearly dubious and it clearly appears that the Appellant was more interested in delaying the proceedings by absenting themselves from appearing before the Adjudicating Authority when the matter was listed for hearing. The intention of the Appellant was to buy more time so as to avoid the execution of the Possession Notice and avail the benefit of moratorium under Section 96 of IBC.*

18. *In the given backdrop, we find that the Appellant was persistently not appearing after filing the Section 94 applications without sufficient cause or explanation. This is a clear case of the Appellant resorting to repeat litigations for the same cause of*

action thus abusing the process of law and wasting the valuable time of the Adjudicating Tribunal. It would not be far from truth to infer that the underlying intent of the Appellant was to prevent the Respondent from taking legal action for the recovery of its outstanding dues against the Appellants including enforcement actions undertaken under SARFAESI Act. We have no reasons to disagree with the Adjudicating Authority that it did not find any satisfactory basis for allowing the restoration application. We are of the considered view that the dismissal of the restoration application is not for unjustified reasons. The Adjudicating Authority cannot be faulted for rejecting the restoration application.”

14. Reverting to the facts of the present case, it is seen that notice under Section 13(2) was issued on 31.12.2019 and thereafter Bank also enforced its rights under Section 13(4) by issuing possession notice. Notice for sale of the assets dated 19.03.2024 was issued fixing 11.04.2024 for the sale of the assets by e-auction. E-auction was held on 11.04.2024 and auction was also confirmed by the Bank on 12.04.2024. It was thereafter on 27.04.2024 Section 94 application was filed by the appellant. Appellant also filed Securitization Application 340/2024 before the DRT challenging the auction which was the appropriate remedy availed by the appellant. Securitization Application was dismissed on 09.08.2024, when appellant could not get any relief from the DRT who refuse to grant relief by order dated 09.08.2024, applications have been filed under Section 94 giving rise to this appeal. In the facts of the case as noticed above, we are of the view that initiation of proceeding under Section 94 by the personal guarantor was not with object of resolution of insolvency of the personal guarantor rather it was only with the intent to somehow create hurdles in the conclusion of the proceedings initiated by the Bank for recovery of its debts when auction was already held

on 11.04.2024 which was confirmed on 12.04.2024, filing of the application on 27.04.2024 clearly was not *bona fide* application and the application was an abuse of process of Court and we are not inclined to interfere with the impugned order passed by the adjudicating authority rejecting the application filed by the appellant in facts of the present case.

15. Learned counsel for the appellant as well as learned counsel for the respondent have made submissions relying on various judgments of the Hon'ble Supreme Court and this Tribunal, according to the appellant unless the Sale Certificate is issued, the rights of the personal guarantors are not extinguished, whereas as per learned counsel for the respondent where auction notice is published on 25.03.2024, the right of redemption of mortgage comes to an end and no right is left in the personal guarantor thereafter. Learned counsel for the appellant has relied on the judgment of the Bombay High Court in '**Arrow Business Development Consultants Private Limited**' (*supra*) in support of his submissions.

16. We however having already found that filing of application under Section 94 by the appellant was clearly abuse of process of the Court, the appellant cannot be allowed to scuttle auction proceedings which have already concluded on 11.04.2024 and were confirmed on 12.04.2024. The Sale Certificate have already been issued in favour of the auction purchaser on 31.05.2024 which was already challenged by the appellant before the DRT in Securitization Application No.340/2024, it is open for the appellant to pursue his remedy before the DRT, where auction held on 11.04.2024 is challenged.

17. We thus are of the view that adjudicating authority has not committed any error in rejecting the two applications filed by the appellant in Section 94 application. Rejection of applications cannot be faulted in the facts and sequence of the events of the present case as noted above.

18. We thus do not find any merit in the appeals. Appeals are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Indevar Pandey]
Member (Technical)**

NEW DELHI

08th May, 2026

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